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No. 9769

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

FEDERAL MOTOR TRUCK COMPANY,
Respondent.

On Petition for Enforcement of an Order of the National Labor Relations Board.

TRANSCRIPT OF RECORD

Original Transcript Filed March 14, 1944

LESLIE WHARTON, PUBLISHER, CINCINNATI, OHIO 4-13-44-25

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IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

No. 9769

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

vs.

FEDERAL MOTOR TRUCK COMPANY,
RESPONDENT.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Filed March 14, 1944)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C., § 151 *et seq.*), respectfully petitions this Court for the enforcement of its order against respondent, Federal Motor Truck Company, Detroit, Michigan, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Federal Motor Truck Company and Amalgamated Protection Local No. 114, U. A. W. - C. I. O., Cases Nos. R-5356 and 7-C-1209."

In support of this petition, the Board respectfully shows:

(1) Respondent is a Michigan corporation, engaged in business in the State of Michigan, within this judicial circuit, where the unfair labor practices occurred. This Court

therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on January 29, 1944, duly stated its findings of fact, conclusions of law, and order directed to respondent and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Federal Motor Truck Company, Detroit, Michigan, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Plant Protection Local No. 114, U.A.W. - C.I.O., as the exclusive representative of all its plant protection employees at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment:

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Amal-

gamated Plant Protection Local No. 114, U.A.W. - C.I.O., as the exclusive representative of all its plant protection employees at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places at its plants in Detroit, Michigan, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

3. On January 29, 1944, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Beaumont, Smith and Harris, respondent's attorneys in Detroit, Michigan.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the record in the proceeding before the Board, including the pleadings, testimony, evidence, findings of fact, conclusions of law, and order of the Board.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon set

forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring respondent and its officers, agents, successors, and assigns, to comply therewith.

NATIONAL LABOR RELATIONS BOARD,
(s) HOWARD LICHTENSTEIN,
Assistant General Counsel.

Dated at Washington, D. C.,
this 10th day of March, 1944.

DISTRICT OF COLUMBIA, ss:

Howard Lichtenstein, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

(s) HOWARD LICHTENSTEIN,
Assistant General Counsel.

Subscribed and sworn to before me this 10th day of March 1944.

(SEAL) (s) JOHN E. LAWYER, *Notary Public,*
District of Columbia.

My Commission Expires August 31, 1944.

ANSWER OF FEDERAL MOTOR TRUCK COMPANY TO THE PETITION OF THE NATIONAL LABOR RELATIONS BOARD FOR THE ENFORCEMENT OF ITS ORDER

(Filed March 17, 1944)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

Answering the "Petition for Enforcement of an Order of The National Labor Relations Board", the Federal Motor Truck Company, respondent, states:

1. Answering paragraph (1), respondent admits the contents thereof, excepting that it denies that the alleged unfair labor practices occurred.

2. Answering paragraph (2), respondent admits the contents thereof, but denies that the conclusions arrived at by the Board in its findings and orders have any support in the facts or the law.

3. Answering paragraph (3), respondent admits the contents thereof.

4. Answering paragraph (4), respondent admits the contents thereof.

Further answering said Petition, respondent denies that the Board is entitled to the relief for which it prays and respectfully alleges the following without waiving any one reason because of any other reason or reasons:

A. The Board erred in failing to hold that the militarized plant protection force are not employees within the meaning of the Act.

B. The Board erred in failing to hold that the militarized plant protection force is a part of supervision and management, and, therefore, not within the Act.

C. The Board erred in holding that the granting of collective bargaining to the militarized plant protection force effectuates the policy of the Act.

D. The Board erred in holding that the militarized plant protection force constitutes, under the Act, a unit, appropriate for the purposes of collective bargaining.

E. The Board erred in failing to hold that, because of the written collective bargaining contracts between the Company and the Union, the Union is barred from representing, for the purpose of collective bargaining, the members of the plant protection force and barred from accepting them into membership.

F. The Board erred in failing to hold that, because of its contractual obligations, the Union can not act as the bargaining agent for the plant protection force.

G. The Board erred in failing to hold that the Union is estopped because of the collective bargaining provisions to represent the plant protection force.

H. The Board erred in holding that Section 2 of Article I of the collective bargaining contracts is invalid.

I. The Board erred in failing to hold that it is not within its legal discretion to find that this plant protection force constitutes an appropriate bargaining unit.

J. The Board erred in failing to find that it is inconsistent with the prosecution of the war effort to certify this militarized plant protection force as a bargaining unit.

K. The Board erred in failing to hold that it is contrary to public policy to include this militarized plant protection force within the benefits of the Act.

L. The Board failed to hold that to grant the relief requested is contrary to the purposes and policies of the National Labor Relations Act and other enactments of the Congress.

M. Inasmuch as the provision in the collective bargaining contracts has been in effect since at least April 1, 1942, the Board should have found that it cannot act in this matter because of the Labor-Federal Security Appropriation Act (Act of July 12, 1943, 78th Congress, c. 221, P. No. 135, Title IV).

N. The Board erred because there is no testimony that what has occurred here has a close, intimate and substantial relation to trade, traffic and commerce between the states and with foreign nations and tends to lead to a

labor dispute burdening and obstructing commerce and the free flow of commerce.

O. The Board erred in ordering respondent to cease and desist from "engaging in any like or related acts or conduct."

P. The Board erred in ordering respondent to cease and desist from "engaging in any like or related acts or conduct interferring with, restraining, or coercing its employees . . .", inasmuch as it is undisputed that respondent has had amicable collective bargaining relations with its productive employees and inasmuch as only the plant protection force is here involved.

Q. The Board erred in requiring respondent to post notices "in conspicuous places" in all its plants rather than merely in the assembly room of the employees involved in this matter.

R. The Board erred in finding respondent guilty of any unfair labor practice.

S. The Board erred to the prejudice of the respondent in admitting into evidence in the Representation case the Board's Exhibit 4.

T. That the Board erred in not holding that the plant protection force constitutes an auxiliary of the military police and, therefore, they are not employees within the meaning of the Act.

U. That there is no substantial evidence to support the finding of the Board that the plant protection force is not clothed with supervisory authority over the production employees of the Company.

Wherefore, the Company prays this Honorable Court that it set aside the order of the Board in whole or such prayer be denied that it set aside the order of the Board in such part as the same is not supported by evidence, or is contrary to law, as is hereinbefore in this answer set forth with particularity, and in so far as the order is so set aside that the Court relieve the Company, its officers,

agents and representatives of any necessity to comply therewith.

FEDERAL MOTOR TRUCK COMPANY,
By ALBERT E. MEDER,
Its Attorney.

BEAUMONT, SMITH & HARRIS,
Attorneys for Federal Motor Truck Co.
11th floor Ford Bldg.,
Detroit 26, Michigan.

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss:

Albert E. Meder, being duly sworn, deposes and says that he is a member of the firm of Beaumont, Smith & Harris and has principal charge of this matter; that he has read the foregoing answer subscribed by him in behalf of the Company and has knowledge of the contents thereof and that the same is true to the best of his knowledge and belief; and that he was authorized for and in behalf of the Company to affix its signature hereto.

ALBERT E. MEDER.

Subscribed and sworn to before me this 16th day of March, A. D. 1944.

(SEAL) HILDEGARDE BOLLMANN, *Notary Public*,
Wayne County, Michigan.

My commission expires: Aug. 20, 1945.

STATE OF MICHIGAN, }
COUNTY OF WAYNE } ss:

Albert E. Meder, being duly sworn, deposes and says that he is a member of the firm of Beaumont, Smith & Harris and has principal charge of the within matter; that he did on the 16th day of March, 1944 serve a true copy of the attached "Answer of the Federal Motor Truck Company to the Petition of the National Labor Relations

Board for the Enforcement of its Order" upon the National Labor Relations Board by placing the same on said date in the United States mail, postage prepaid, at Detroit, Michigan, addressed "National Labor Relations Board, Washington, D. C."

ALBERT E. MEDER.

Subscribed and sworn to before me this 16th day of March, A. D. 1944.

(SEAL) HILDEGARDE BOLLMANN, *Notary Public*, Wayne County, Michigan.

My commission expires: Aug. 20, 1945.

BOARD'S DESIGNATION

(Filed March 14, 1944)

Comes now the National Labor Relations Board, petitioner herein, and pursuant to Rule 15 (5) of this Court, files this designation of the portions of the transcript of the record herein to be contained in the printed record.

A. Petition for enforcement, any responses filed thereto, and this designation of record.

B. Certificate of the National Labor Relations Board, together with the following items thereof:

The following Items of the Board's Certificate of Record;

R-5356 (VII-R-1409)

Item 1.—The entire stenographic transcript of testimony, together with the following Exhibits: Board Exhibit 1, 3; Respondent's Exhibit 3 (only page 1); excerpts of Union's Exhibit 1, page 1 as far as paragraph c, page 7 beginning with paragraph b as

far as paragraph c, page 8 paragraphs f and h including subsections (1) and (2) of h, page 9 paragraphs 7 as far as c, page 10 paragraph c subsection (1) only: Items 2, 3, 4, 5—(except sample of official ballot), 6—(except affidavit of service).
7-C-1209

7-C-1209

Item 7.—Stenographic transcript of testimony together with Board Exhibits 1a, 1c, 2, 4-A, and 4-B; Items 10 and 11—(except affidavit of service).

(s) HOWARD LICHTENSTEIN,
Assistant General Counsel,
NATIONAL LABOR RELATIONS BOARD.

Dated at Washington, D. C.,
this 10th day of March, 1944.

RESPONDENT'S DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD

(Filed March 17, 1944)

Now comes the Respondent Federal Motor Truck Company by its counsel and designates the following portions of the transcript of the record herein to be contained in the printed record in addition to the portions heretofore designated by the National Labor Relations Board:

VII-R-1409

Board's Exhibit 4.

Sections 1, 2, 4, and 9 of Article 6 and Section 1 of Article 18 of Respondent's Exhibit 1.

Respondent's Exhibit 2.

The first paragraph; Section 1 and 2 of Article I; and Article VIII with signatures of Respondent's Exhibit 3.

Respondent's Exhibit 4.

Respondent's Exhibit 5 together with the agreement attached thereto.
Respondent's Exhibit 6.
Respondent's Exhibit 7.
All of Union's Exhibit 1.

7-C-1209

The first paragraph; Section 1 and 2 of Article I; and Article VIII with signatures of Company's Exhibit 1.

BEAUMONT, SMITH & HARRIS,
Attorneys for Respondent,
By ALBERT E. MEDER,
11th floor Ford Bldg.,
Detroit 26, Michigan.

Dated at Detroit, Michigan,
this 16th day of March, 1944.

STATE OF MICHIGAN, } ss:
COUNTY OF WAYNE }

Albert E. Meder, being duly sworn, deposes and says that he is a member of the firm of Beaumont, Smith & Harris and has principal charge of the within matter; that he did on the 16th day of March, 1944 serve a true copy of the attached "Respondent's Designation of Additional Portion of the Record" upon the National Labor Relations Board by placing the same on said date in the United States mail, postage prepaid, at Detroit, Michigan, addressed "National Labor Relations Board, Washington, D. C."

ALBERT E. MEDER.

Subscribed and sworn to before me this 16th day of March, A. D. 1944.

(SEAL) HILDEGARDE BOLLMANN, *Notary Public,*
Wayne County, Michigan.

My commission expires: Aug. 20, 1945.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

(Signed March 10, 1944)

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section I of Article VI, Rules and Regulations of the National Labor Relations Board—Series 3, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a proceeding had before said Board, "In the Matter of Federal Motor Truck Company and Amalgamated Protection Local No. 114, U.A.W. - C.I.O.," the same being known as Cases Nos. R-5356 and 7-C-1209, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

R-5356 (7-R-1409)

(1) Stenographic transcript of testimony before Robert J. Wiener, Trial Examiner for the National Labor Relations Board on May 14, 1943, together with all exhibits introduced in evidence.

(2) Copy of respondent's letter, dated May 19, 1943, requesting oral argument before the Board.

(3) Copy of letter, dated June 2, 1943, denying respondent's request for oral argument before the Board.

(4) Copy of Decision, Findings of Fact, and Direction of Election issued by the National Labor Relations Board June 8, 1943.

(5) Copy of report on ordered election, dated July 6, 1943, together with official ballot.

(6) Copy of Certification of Representatives issued by the National Labor Relations Board on July 16, 1943, together with affidavit of service.

7-C-1209

(7) Stenographic transcript of testimony before John H. Eadie, Trial Examiner for the National Labor Rela-

tions Board on November 15, 1943, together with all exhibits introduced in evidence.

(8) Copy of the Intermediate Report of Trial Examiner Eadie, dated November 23, 1943. (attached to Item 11 hereof).

(9) Copy of order transferring the case to the Board, dated November 25, 1943.

(10) Copy of respondent's exceptions to the Intermediate Report, dated December 6, 1943.

(11) Copy of Decision and Order issued by the National Labor Relations Board January 29, 1944, with Intermediate Report annexed together with affidavit of service thereof.

IN TESTIMONY WHEREOF the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 10th day of March 1944.

JOHN E. LAWYER,
Chief, Order Section,
National Labor Relations Board.

CASE No. VII-R-1409

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SEVENTH REGION

In the matter of— FEDERAL MOTOR TRUCK COMPANY, and AMALGAMATED PLANT PROTECTION LOCAL UNION No. 114, UAW-CIO	Case No. VII-R-1409

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9 (c) OF THE NATIONAL LABOR RELATIONS ACT

Board's Exhibit No. 1

(Filed April 6, 1943)

1. Name of employer—Federal Motor Truck Company.
2. Address—5780 Federal Avenue, Detroit, Michigan.
3. General nature of business—Manufacture of War Trucks.
4. Description of the bargaining unit which petitioner claims is appropriate—Plant Protection Employees excluding the chief or anyone acting in a supervisory capacity.
5. Approximate number of employees in such unit—16.
6. Approximate total number of employees in plant or plants involved—600.
7. Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—12.
8. Who is the present bargaining representative of employees?—No one.

Petition for Investigation and Certification of Representatives

9. Names, addresses, and affiliation of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.
10. Is there an existing or recently expired contract and if so give expiration date?—No.
11. The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: The petitioning union feels that it must appeal to the N.L.R.B. for recognition inasmuch as the Company refuses to answer letter sent them on March 29, 1943.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9 (c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the full name, local number and affiliation of the organization and the name and official position of the person acting for the organization.)

AMALGAMATED PLANT PROTECTION LOCAL UNION No. 114, UAW-CIO,
IRVING E. GRIFFETH, *President*,
907 Hofmann Bldg., CA 5490.

Subscribed and sworn to before me this 5th day of April, 1943 at Detroit, Michigan.

(SEAL) CHESTER MARTIN WHEELER, *Notary Public*,
Wayne County, Michigan.

My commission expires July 2, 1944.

NOTICE OF HEARING

(Signed May 7, 1943)

The Petitioner, above named, having heretofore filed with the National Labor Relations Board, Seventh Region, a Petition for Investigation and Certification of Representatives, pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, copy of which Petition is hereto attached, and it appearing to the National Labor Relations Board that a question affecting commerce has arisen concerning the representation of employees described by such Petition,

YOU ARE HEREBY NOTIFIED that pursuant to Section 9 (c) of the Act, on the 14th day of May, 1943, at 10:00 A. M. in the Hearing Room at 1332 National Bank Building, Detroit, Michigan, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board upon the question of representation affecting commerce which has arisen, at which time and place you will have the right to appear in person or otherwise, and give testimony.

IN WITNESS WHEREOF, the National Labor Relations Board has caused this, its Notice of Hearing, to be signed by the Regional Director for the Seventh Region on this 7th day of May, 1943.

HAROLD A. CRANEFIELD,
Acting Regional Director,
National Labor Relations Board.

STATEMENT OF REGIONAL DIRECTOR CONCERNING CLAIMS OF AUTHORIZATION FOR THE PURPOSE OF REPRESENTATION

The undersigned, Regional Director for the National Labor Relatioins Board, Seventh Region, has investigated the petition filed by Amalgamated Plant Protection Local Union No. 114, UAW-CIO.

In connection with the investigation petitioner has submitted in support of its claim of substantial membership 15 authorization cards which contain the following language among other recitals;

> I hereby designate, select and empower the International Union, United Automobile, Aircraft, & Agricultural Implement Workers of America (UAW-CIO), as my representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment; and I hereby revoke every selection or designation which in any manner may heretofore have been made by me, or any other representative for any of such purposes.
>
> I further authorize the International Union, United Automobile, Aircraft, & Agricultural Implement Workers of America (UAW-CIO) to appear and act for me and in my behalf before any board, court, committee or other tribunal in any matter affecting my status as an employe or as a member of the International Union, United Automobile, Aircraft, & Agricultural Implement Workers of America (UAW-CIO).
>
> I further specifically repudiate any organization which uses the name "International Union, United Automobile, Aircraft, & Agricultural Implement Workers of America" (UAW-CIO) but which is not affiliated with the CIO.

1. These cards were dated as follows:

   14 in March 1943
   1 undated

2. All 15 of said authorization cards bear signatures which appear to be genuine original signatures.

3. All 15 of said authorization cards bear the names of persons appearing on the Company's pay roll submitted April 26, 1943, and fall within the unit claimed by the petitioner as appropriate. This pay roll lists 18 persons in the alleged appropriate unit.

Dated at Detroit, Michigan, this 30th day of April, 1943.

FRANK H. BOWEN,
Regional Director,
National Labor Relations Board,
Seventh Region.

RESPONDENT'S LETTER REQUESTING ORAL ARGUMENT

(COPY)

May 19, 1943

National Labor Relations Board
Washington, D. C.

Attention: Chief Trial Examiner

Re: Federal Motor Truck Company
Case No. VII-R-1409

Gentlemen:

In accord with your rules, and as counsel for the employer, we enclose herewith the original and three copies of the brief of the Federal Motor Truck Company.

You will note that in the conclusion of the brief we are asking for an oral argument. We appreciate that in representation cases the Board does not favor the granting of such a request, but we feel that the questions here involved are of such importance, especially in the Detroit area, that we should be given an opportunity to orally present the matter to the Board. There are a great many of these cases. Most of them are being opposed by man-

agement. A decision of the Board after an oral argument and thorough consideration would be most helpful.

A copy of the brief is today being served upon counsel for the union.

Very truly yours,

(s) ALBERT E. MEDER.

LETTER DENYING RESPONDENT'S REQUEST FOR ORAL ARGUMENT

June 2, 1943

Albert E. Meder, Esquire
Messrs. Beaumont, Smith & Harris
Eleventh Floor Ford Building
Detroit, Michigan.

Re: Federal Motor Truck Company
Case No. R-5356

Dear Sir:

With further reference to your communication of May 19, 1943, please be advised that the Board has considered and denied your request for oral argument in the above matter.

Very truly yours,

JOHN E. LAWYER,
Chief, Order Section.

JL/ep

TRIAL EXAMINERS' STATEMENT IN "R" CASES
Board's Exhibit No. 3

In relation to the Board's investigation concerning the selection of representatives for the purposes of collective bargaining in this case, it is desired at the outset to make clear the position of the trial examiner. The sole objective of the trial examiner here is to obtain a full and complete factual record upon which the Board itself may discharge its duties under Section 9 of the National Labor Relations Act.

It is the duty of the trial examiner to see that the record is full enough to contain all the material evidence but to limit the testimony and refuse to permit the inroduction of evidence which is not material and relevant. His discretion is limited by this duty with which he is charged. Your attention should also be called to the fact that, in this type of case, as distinguished from a case where the employer is charged with the commission of unfair labor practices in violation of the Act, the trial examiner does not render an intermediate report to the parties. The case goes directly to the Board for decision.

In general, the trial examiner will present evidence bearing upon the question of the Board's jurisdiction over the parties and the subject matter of the investigation, while the representatives of the other parties will be expected (with the assistance of the trial examiner if necessary) to present evidence upon the remaining issues. These issues include a description of the labor organizations involved, facts relating to the question concerning representation which is alleged to have arisen, the limits of the appropriate unit for collective bargaining, and the eligibility of employees for voting in any election which may be ordered. The services of the trial examiner are equally at the disposal of all parties to the proceeding in developing such material evidence.

More specifically the evidence should disclose, as to the labor organizations involved, their identity, time of formation, and general structure, including data as to eligibility of members, with particular reference to the employer here

concerned. The nature of the question concerning representation should be shown by proof as to whether conflicting claims as to representation are being made, or whether the employer questions the representative status of any of the parties. Likewise the time when organization began, the department or group of employees affected, the subsequent growth or decline of membership, present claims as to membership, and relations had with the employer, including requests for collective bargaining and the presence or absence of contracts, are all of importance.

In considering the appropriate unit for purposes of collective bargaining, the proof should reveal the physical properties involved, a break-down of the nature of work performed by employees as well as an analysis of the numbers of employees engaged in each type of work. The presence or absence of craft organizations should be established, as well as evidence submitted on the identity or differentiation of employees' problems as to wages, hours, or working conditions. The history of bargaining units in the plant or in the industry should be disclosed. Information is also desired as to the date as of which the payroll of eligible voters should be taken, for purposes of election or certification.

These suggestions are of necessity not all-inclusive. They may, however, serve to guide the parties to a full and complete factual presentation in which the trial examiner will, in an entirely neutral capacity, assist. The cooperation of all in order to get these facts as expeditiously as possible is required.

DECISION AND DIRECTION OF ELECTION
Board's Exhibit No. 3-A

(Signed June 8, 1943)

Beaumont, Smith and Harris, by *Mr. Albert E. Meder,* of Detroit, Mich., for the Company.

Maurice Sugar and N. L. Smokler, by *Messrs. N. L. Smokler* and *Irving E. Griffeth,* both of Detroit, Mich., for the Union.

Mr. David V. Easton, of counsel to the Board.

Statement of the Case

Upon petition duly filed by Amalgamated Plant Protection Local Union No. 114, UAW-CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of the employees of Federal Motor Truck Company, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert J. Wiener, Trial Examiner. Said hearing was held at Detroit, Michigan, on May 14, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Company and the Union each filed briefs which have been considered by the Board.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The business of the Company

Federal Motor Truck Company, a Michigan corporation, is normally engaged in the production of motor trucks, bodies, cabs, and parts. At the present time the Company is wholly engaged in the manufacture of trucks and truck parts for the United States Army. For these purposes the Company operates three plants, all of which are located in Detroit, Michigan, and with which we are concerned herein. In the calendar year 1942 the Company purchased raw materials from points located outside the

State of Michigan valued at approximately $10,400,000. During the same period the Company made deliveries of finished products to points outside the State of Michigan totaling approximately $25,000,000. We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. The organization involved

Amalgamated Plant Protection Local Union No. 114 is a labor organization chartered by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, herein called the International, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. The question concerning representation

On March 29, 1943, the Union requested the Company, by letter, that it be recognized as the exclusive bargaining represenative of the Company's plant-protection employees. The Company refused to comply with this request. Thereafter, on April 5, 1943, the Union filed the petition in this proceeding.

The Company is currently operating under a collective bargaining agreement with the International and its Local 174, which covers all factory employees of the Company with the exception of certain specified classifications, among which are plant-protection employees. This agreement contains the provision that "the Union will not solicit or accept . . . for membership" those employees who were excluded from the purview of this agreement. The Company contends that the Union is bound by this provision, and is therefore estopped from seeking to represent the plant-protection employees.

A similar argument has been heretofore found untenable in a number of cases.[1] In the *Packard* case, we stated:

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[1] *Matter of Briggs Manufacturing Company* and *Amalgamated Plant Protection Local Union No. 114 (UAW-CIO)*, 49 N.L.R.B., No. 10; *Matter of Packard Motor Car Company* and *International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO)*, 47 N.L.R.B., No. 117.

> The issue becomes . . . whether employees may be denied the privilege of selecting a particular labor organization as their representative because that organization has agreed, in a contract with their employer, not to represent them. In our opinion, such a contractual provision contravenes the express purpose and policy of the Act.

Accordingly, we reject this argument of the Company and find that the afore-mentioned contract does not preclude the Union from seeking to represent the plant-protection employees.

A statement of the Regional Director, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.[2]

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. The appropriate unit

The Union contends that all plant-protection employees, excluding the plant engineer, the assistant chief of plant protection, and supervisors, constitute an appropriate unit. The Company contends that such a unit is not one that is appropriate within the meaning of the Act. This contention is based upon the following arguments: (a) plant-protection employees are part of the supervisory and management group; (b) they are auxiliaries of the military police, and therefore are not employees within the meaning of the Act; and (c) it is contrary to public policy to include plant-protection employees.[3] The Company con-

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[2] The Regional Director reported that the Union submitted 15 authorization cards bearing apparently genuine original signatures and names appearing upon the Company's pay roll which was submitted on April 26, 1943. This pay roll contains the names of 18 persons in the appropriate unit.

[3] In addition, the Company argues that the contract provision referred to above precludes finding that plant-protection employees constitute an appropriate unit.

cedes that, if these arguments are found to be invalid, then the unit sought by the Union would be appropriate.

The Company argues that in normal times the duties of the plant-protection employees are such that these employees are part of the managerial and supervisory arm of the Company. The record discloses that prior to August 1942, they were known as watchmen and firemen, but since that date they have been termed plant-protection employees. They were and are now vested with those duties and powers customarily given to employees concerned with the physical care of the premises. The Company asserts that in times of industrial strife these employees must necessarily be aligned with management because of their duties, and therefore they are more appropriately akin to management than to the regular production employees. While their duties are of a special nature, it is clear that plant-protection employees are clothed with no supervisory authority over their fellow employees. We find nothing in their duties which impels the conclusion that their relationship to management is so close that they cannot be represented in a separate unit for collective bargaining.

Now that the plant-protection employees have become militarized, the Company contends that their duties and obligations, not only to the Company but also to the United States Government, are such as to require finding that they are no longer "employees." It points to the fact that they are now subject to military rather than civil jurisdiction; that they now have the power to arrest; that they are required to receive special instructions given by the United States Army, and that their duties have become more stringent. The Company further asserts that they have the power to recommend discharges. However, their arms, pay, uniforms, and conditions of employment are still under the control of the Company. The Company controls hiring and dismissal, subject to some supervision by the military authorities. A bulletin issued by the Army authorities with regard to the regulations of military police recites that "basically, the militarization of plant guard forces does not change the existing systems

of hiring, compensation, and dismissal; all remain primarily a matter between the guards and the plant management." The alleged power to recommend discharge is not the customary authority exercised by foremen or other supervisory employees. While discharge may result from a report of a plant guard, it flows from the facts reported by him rather than from the exercise of any discretionary authority vested in him. We accordingly reject the argument that plant-protection employees are no longer employees within the meaning of the Act.[4]

We find that all plant-protection employees of the Company engaged at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. The determination of representatives

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of our Direction of Election, subject to the limitations and additions set forth therein.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Federal Motor Truck Company, Detroit, Michigan, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date

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[4] *Matter of Jones & Laughlin Steel Company, Otis Works and United Steelworkers of America (C.I.O.)*, 49 N.L.R.B., No. 50, and cases cited therein.

of this Direction, under the direction and supervision of the Regional Director for the Seventh Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 10, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Amalgamated Plant Protection Local Union No. 114, affiliated with International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

Signed at Washington, D. C., this 8th day of June, 1943.

HARRY A. MILLIS, *Chairman,*
JOHN M. HOUSTON, *Member,*
National Labor Relations Board.

(SEAL)

REPORT ON ORDERED ELECTION

(Docketed July 10, 1943)

Pursuant to the Rules and Regulations of the National Labor Relations Board (herein called the Board), the undersigned hereby reports that the election heretofore directed by the Board in the above-entitled case was conducted in accordance with the notice of election attached hereto and with the following results:

Approximate number of eligible voters 18

Counts of Ballots:

Total ballots cast	17
Total ballots challenged	0
Total void ballots	1
Total valid votes counted	16
Votes cast for A.P.P.L.U.No. 114, affiliated with I.U., U.A.A. and A.I.W.A., CIO	15
Votes cast against A.P.P.L.U. No. 114, affiliated with I.U., U.A.A. and A.I.W.A., CIO	1

The counting and tabulating were fairly and accurately done. Statements to such effect from the observers to the election are on file.

The undersigned find that Amalgamated Plant Protection Local Union No. 114, affiliated with International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (has) been designated and selected by a majority of the employees in the bargaining unit found by the Board in its Decision in this proceeding to be appropriate and recommends that the Board (so certify).

Dated at Detroit, Michigan, this 6th day of July, 1943.

(s) FRANK H. BOWEN,
Regional Director,
National Labor Relations Board.

CERTIFICATION OF REPRESENTATIVES

Board's Exhibit No. 3-B

(Signed July 16, 1943)

On July 3, 1943, pursuant to the Decision and Direction of Election issued by the Board herein on June 8, 1943,[1] an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Seventh Region (Detroit, Michigan). Thereafter, on July 6, 1943, in accordance with the Rules and Regulations of the Board, a Report on Ordered Election was issued and served upon the parties. No objections to the said report, or to the conduct of the ballot, have been filed by any of the parties. The report shows as follows:

Approximate number of eligible voters	18
Total ballots cast	17
Total ballots challenged	0
Total void ballots	1
Total valid votes counted	16
Votes cast for A.P.P.L.U. No. 114, affiliated with I.U., U.A.A. and A.I.W.A., CIO	15
Votes cast against A.P.P.L.U. No. 114, affiliated with I.U., U.A.A. and A.I.W.A., CIO	1

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9, (c) of the National Labor Relations Act, and pursuant to Article III, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 2, as amended,

IT IS HEREBY CERTIFIED that Amalgamated Plant Protection Local Union No. 114, affiliated with International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, has been designated and selected by a majority of all plant-protection employees of Federal Motor Truck Company engaged at its three Detroit, Michigan, plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a)

[1] 50 N.L.R.B., No. 36.

of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours or employment, and other conditions of employment.

Signed at Washington, D. C., this 16th day of July, 1943.

HARRY A. MILLIS, *Chairman*,
JOHN M. HOUSTON, *Member*.
National Labor Relations Board.

(SEAL)

TRANSCRIPT OF TESTIMONY

(Docketed May 20, 1943)

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SEVENTH REGION

1*

In the matter of

FEDERAL MOTOR TRUCK COMPANY

and

AMALGAMATED PLANT PROTECTION LOCAL UNION No. 114, UAW-CIO

Case No. VII-R-1409

1332 National Bank Building
Detroit, Michigan
Friday, May 14, 1943.

Pursuant to Notice, the above-entitled matter came on for hearing at 10:00 A. M.

Before: ROBERT J. WIENER, Trial Examiner.

APPEARANCES:

Beaumont, Smith and Harris, by *Albert E. Meder, Esq.*, 11th Floor Ford Building, Detroit, Michigan, for the Company.

Maurice Sugar and N. L. Smokler, by *N. L. Smokler, Esq.*, 3220 Barlum Tower, Detroit, Michigan, and

Irving E. Griffeth, Esq., 907 Hofmann Building, Detroit, Michigan, for the Petitioner.

2 (Original Index)

* Inset numbers appearing at outer edge of text indicate page numbers of original stenographic transcript of testimony.

PROCEEDINGS

3 Trial Examiner Wiener: The hearing will be in order.

Mr. Meder: Now let it be understood I am not urging to go ahead without Mr. Smokler.

Trial Examiner Wiener: Well, do you want to adjourn until he gets here, Mr. Meder?

Mr. Meder: May we go off the record?

Trial Examiner Wiener: Off the record.

(Discussion off the record).

Trial Examiner Wiener: On the record.

We will take a fifteen-minute adjournment in the hope that Petitioner's counsel will appear by that time.

(A short recess was taken).

Trial Examiner Wiener: On the record.

This is a formal hearing in the matter of Federal Motor Truck Company, and Amalgamated Plant Protection Local Union No. 114, UAW-CIO, the case being Number 7-R-1409, before the National Labor Relations Board.

Counsel will please state all appearances for the record. The Trial Examiner appearing for the National Labor Relations Board is Robert J. Wiener.

Mr. Smokler: Maurice Sugar and N. L. Smokler, by N. L. Smokler, 3220 Barlum Tower, Detroit, Michigan.

Mr. Griffeth: Irving E. Griffeth, 907 Hofmann Building, representing UAW-CIO, No. 114.

Mr. Meder: Beaumont, Smith, and Harris, by Albert E. Meder for the Company, 11th Floor of the Ford

4 Building, Detroit.

Trial Examiner Wiener: You gentlemen have all heard this opening statement a number of times, and may we dispense with the reading of it?

Mr. Smokler: You can as far as the Petitioner is concerned.

Mr. Meder: Yes, sir.

Trial Examiner Wiener: I ask the reporter to mark as Board's Exhibit 1, a collective exhibit consisting of the Petition for Certification, and the Notice of Hearing; as Board's Exhibit 2, Affidavit as to Service of notice of

hearing; as Board's Exhibit 3, the Trial Examiner's statement in "R" cases, and as Board's Exhibit 4, Statement of Regional Director Concerning Claims of Authorization for the Purpose of Representation.

(The documents referred to were marked for identification, Board's Exhibits 1, 2, 3, and 4).

Mr. Meder: The Company will have no objection to Exhibits 1, 2, and 3. As to Exhibit 4, we object to it for the reason it is hearsay, not competent proof.

Trial Examiner Wiener: Mr. Smokler, have you any objection to Board's Exhibits 1 through 4?

Mr. Smokler: No, I have no objections.

Trial Examiner Wiener: Noting the objection of the Company to Board's Exhibit 4, I will admit Board's
5 Exhibits 1, 2, 3, and 4.

(The documents heretofore marked for identification as Board's Exhibits 1, 2, 3, and 4, were received in evidence).

Trial Examiner Wiener: Mr. Smokler, do you want to join in the Commerce stipulation, or do you want that between the Company and the Board?

Mr. Smokler: Either way.

Trial Examiner Wiener: It is stipulated by and between the parties to this proceeding that the Federal Motor Truck Company is incorporated in the State of Michigan. In peacetime, its business consisted of the production of motor trucks, bodies, cabs, and parts. The Company is now wholly engaged in the manufacture of trucks and truck parts for the United States Army.

In the calendar year, 1942, the Company purchased raw materials which originated at points outside the State of Michigan in the value of approximately ten million four hundred thousand dollars, and its total purchases of raw materials was in excess of that amount.

During the calendar year, 1942, the Company made deliveries of finished products to points in states other than the State of Michigan, totaling approximately twenty-five million dollars, and its total shipments of all furnished

products during the year 1942, was in excess of that amount.

6 The principal raw materials used by the Company in the manufacture of its products are wood, steel, lumber, tires, and parts.

Does Petitioner so stipulate?

Mr. Smokler: The Petitioner so stipulates.

Trial Examiner Wiener: Does the Company so stipulate?

Mr. Meder: Yes.

Trial Examiner Wiener: The Board so stipulates.

It is stipulated by and between the parties to this proceeding that Amalgamated Plant Protection Local Union Number 114, UAW-CIO, the Petitioner herein, was chartered by International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America (UAW-CIO), an affiliate of the Congress of Industrial Organizations, on June 24, 1942, and that it is a labor organization within the meaning of the National Labor Relations Act.

Does the Petitioner so stipulate?

Mr. Smokler: Petitioner so stipulates.

Trial Examiner Wiener: Does the Company so stipulate?

Mr. Meder: Yes, sir.

Trial Examiner Wiener: It is stipulated by and between the parties to this proceeding, that a question concerning representation has arisen in that on March 29, 1943, a letter was transmitted by Petitioner to the Company, in which Petitioner requested that it be recognized as bargaining agent for certain of the Company's

7 Plant Protection employees, and in that, the Company has not complied with the request.

Does Petitioner so stipulate?

Mr. Smokler: Petitioner so stipulates.

Trial Examiner Wiener: The Company?

Mr. Meder: Yes.

Trial Examiner Wiener: Before reading a stipulation with respect to the question of the appropriateness of the alleged unit in this matter, Company counsel has asked an opportunity to state the Company's position with respect to the matter.

Mr. Smokler: Before we proceed wih that, Mr. Examiner, do you desire that the letter which was sent to the Company be introduced in evidence?

Trial Examiner Wiener: You may introduce it. It makes no difference to me.

Mr. Smokler: If it is not necessary, I won't introduce it.

Trial Examiner Wiener: It is not necessary in view of the situation.

Mr. Meder: The position of the Federal Motor Truck Company is, in the first place, that the Plant Protection men are a part of the supervision, part of management. Therefore, the Company should not be required under the Act to recognize the bargaining agency for them; that the men here involved are militarized Plant Protection men, and as such, in this case, are not employees within the meaning of the Act; that it would be contrary to
8 public policy to include militarized Plant Protection men such as these men, within the Act; that it is not within the legal discretion of the Board to issue any certification of the facts of this case; that it is inconsistent with the prosecution of the war effort and the war itself to certify this Union, or any other union, as the bargaining agency of Plant Protection men.

Without waiving any of the positions we have thus far taken, the Company takes the further position that even if these Plant Protection men are employees within the Act, the International Union, of which Local 114 is a part, is under written contract with the Company, in which contract the International agrees that it will not accept for membership, or represent, Plant Protection men.

The Company further takes the position that it will not effectuate the policies of the Act to grant representation in this case.

The Company further takes the position that the proposed unit here is not an appropriate unit, not an appropriate bargaining unit.

Furthermore, the Company denies that there is a question affecting commerce involved.

Now as far as our position to the effect that the unit here is not an appropriate bargaining unit, let me say

that if it should be held that we are wrong on all our contentions, then I will admit that the unit here is
9 the kind of unit that would be appropriate for collective bargaining.

Trial Examiner Wiener: May we stipulate, gentlemen, that if each and every one of the Company's contentions is overruled by the Board, that then the Board may properly find to be appropriate a unit consisting of the Plant Protection employees of this Company at its Federal Avenue Plant, Detroit, Michigan, Number Two Plant at Michigan and Hubbard Avenues, Detroit, Michigan, and two floors at 574 East Woodbridge Street, Detroit, Michigan, as a single unit, excluding, however, the plant engineer and the assistant chief of plant protection?

Mr. Meder: Yes, on behalf of the Company. That is what I meant by the latter part of my statement of a few moments ago.

Trial Examiner Wiener: Does the Petitioner so stipulate?

Mr. Smokler: Yes. Without, of course, admitting any validity to any contentions raised by the Company. More specifically, denying that the questions raised by the Company have any bearings on these proceedings.

Trial Examiner Wiener: Do you care, at this point, Mr. Smokler, to make a similar catalog of your contentions?

Mr. Smokler: May we have just a moment, Mr. Examiner?

Trial Examiner Wiener: We will be off the record.

(Discussion off the record).

Trial Examiner Wiener: On the record.

Mr. Smokler, have you any witnesses you want to present at this time?

10 Mr. Smokler: You asked me, not to answer your question directly, whether I had any statement to make in answer to Mr. Meder's.

Trial Examiner Wiener: That is correct. Excuse me. You have an opportunity to make such a statement.

Mr. Smokler: The only statement I care to make at this time is, all the contentions raised by counsel have been

adjudicated by the Board, and found by the Board to be without merit. Probably depending upon the evidence, of course, I might or might not elaborate on that statement.

Trial Examiner Wiener: Well, you will have an additional opportunity at the close of the hearing, Mr. Smokler, to make any brief statement; so will Mr. Meder.

Mr. Smokler: The Petitioner has no further testimony at this time. However, I wonder whether or not there should be some testimony in the record with respect to the single unit. I note that the Company has several plants or parts of plants. I wonder if it might be advisable to introduce some testimony.

Trial Examiner Wiener: Do you care to call a witness and question him?

Mr. Meder: May we go off the record a moment?

Trial Examiner Wiener: Off the record.

(Discussion off the record).

Trial Examiner Wiener: On the record.

Mr. Smokler: The Petitioner rests.

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11 **FORBES W. LUTTON,**

a witness called by and on behalf of the Company, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Meder): Your name is Forbes W. Lutton?

A. Yes, sir.

Q. You are plant engineer at the Federal Motor Truck Company, Detroit?

A. Yes, sir.

Q. As plant engineer, you are in charge of the watchmen?

A. Yes, sir.

Q. The Company now has three plants, has it not?

A. Yes, sir.

Q. One of them is the main plant located on Federal Avenue?

A. Yes.

Q. Then you have a plant at Michigan and Hubbard called No. 2 Plant?

A. Yes, sir.

Q. There you have one watchman on each of three shifts, is that correct?

A. That is right.

Q. Then you occupy two floors down at 574 East Woodbridge?

A. Yes.

Q. And you have two watchmen on one shift there?

A. That is right.

12 Q. All three of these plants are in Detroit?

A. That is right.

Trial Examiner Wiener: The balance of the 18 watchmen referred to in Board's Exhibit 4 are employed at the Federal Avenue Plant, are they?

The Witness: That is right.

Q. (By Mr. Meder): But you have 660 employees in the unit out there, for which Local 174 of the International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, bargain? Is that correct?

A. Yes, sir.

Mr. Meder: Mark this, please.

(The document referred to was marked for identification as Company's Exhibit 1).

Mr. Meder: The Company offers in evidence the Constitution of the International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, UAW-CIO, dated August, 1942, which is the present constitution, as I understand it, of the International Union. Is that correct?

Mr. Smokler: That is correct.

Mr. Meder: We offer it in evidence.

Mr. Smokler: Petitioner has no objection.

Trial Examiner Wiener: Without objection the exhibit will be received.

(The document heretofore marked for identification as Company's Exhibit 1 was received in evidence).

Mr. Meder: Mark this, please..

(The document referred to was marked for identification as Company's Exhibit 2).

Mr. Meder: Company also offers in evidence Company's Exhibit 2, the application card used by the International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, UAW-CIO, in the organization of the watchmen involved in this case. I understand that is agreed to.

Mr. Smokler: I offer no objection to the constitution, because I assumed that Mr. Meder was going to tie it up later on.

Mr. Meder: Oh, yes.

Mr. Smokler (Continuing): In connection with the contentions that you stated on the record earlier in the proceedings?

Mr. Meder: That is right.

Mr. Smokler: And with that reservation, I have no objection.

Trial Examiner Wiener: Company's Exhibit 2 will be received.

(The document heretofore marked for identification as Company's Exhibit 2 was received in evidence).

Mr. Meder: Mark this, please.

(The document referred to was marked for identification as Company's Exhibit 3).

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Q. (By Mr. Meder): I show you a paper which has been marked for identification, Company's Exhibit 3, and ask you whether that is an agreement that is now in force between the Company and the International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, and its Local 174, covering the 660 employees whom we referred to a few moments ago?

A. Yes, it is.

Mr. Meder: I offer this exhibit in evidence, especially because of the contents of Section 2 of Article I.

Mr. Smokler: I don't see the materiality of Company's proposed Exhibit No. 3; therefore, object to its introduction in evidence.

Trial Examiner Wiener: It seems to me to be connected with at least one of the contentions that the Company has already made in this proceeding, and I will admit it.

(The document heretofore marked for identification as Company's Exhibit 3, was received in evidence).

Mr. Meder: Mark this, please.

(The document referred to was marked for identification as Company's Exhibit 4).

Q. (By Mr. Meder): I show you now, Witness, paper which for the purpose of identification has been marked C-4, Company's Exhibit 4, and ask you if you have seen that before.

15 A. Yes, sir.

Q. That is a memorandum, is it not, dated August 7, 1942, from the headquarters of the Sixth Service Command, Internal Security Division, Plant Protection Branch, Quartermaster Section, signed by Charles S. Stewart, Major, is that correct?

A. Yes, sir, correct.

Q. These watchmen, whom you have now are militarized, are they not?

A. They are.

Q. State whether or not this Company's Exhibit 4 was one of the reasons that lead up to the militarizing of these watchmen.

A. It is.

Mr. Meder: I offer in evidence Company's Exhibit 4.

Mr. Smokler: Have you an extra copy of your proposed Exhibit No. 4?

Mr. Meder: No, but I will see that you get one.

Mr. Smokler: Mr. Examiner, I would like to inquire at

this time of Mr. Meder what purpose he has in mind in offering Company's Exhibit No. 4.

Mr. Meder: Why these people are militarized police, why they became militarized, fitting in with one of my defenses, what led up to their being militarized. In other words, the question of the Army.

Mr. Smokler: I would like to be heard on that, Mr. Examiner but I am waiting until after you have finished reading the exhibit.

16 Trial Examiner Wiener: All right, Mr. Smokler, go ahead.

Mr. Smokler: The reasons which Mr. Meder stated in support of the materiality of Company's Exhibit Number 4 are not with any merit, because the Board has already adjudicated that entire issue, and has found that Plant Protection employees are employees within the meaning of the Act in a number of decisions. I therefore object to the introduction in evidence of Company's Exhibit No. 4, as not being material to the issues in this case.

Mr. Meder: That is a strange objection in a case in which we are contesting the very issue about which counsel speaks.

Trial Examiner Wiener: If I understood your statement, Mr. Meder, your purpose in introducing Company's Exhibit 4 for identification, was to establish the fact that at the request of army authority, the employees in the unit here alleged to be appropriate, are auxiliaries to the military police, is that correct?

Mr. Meder: That is correct.

Trial Examiner Wiener: Can't we stipulate that, Mr. Smokler?

Mr. Smokler: Yes.

Trial Examiner Wiener: It is stipulated by and between the parties to this proceeding that the employees in the unit alleged by Petitioner to be appropriate are, all of them, auxiliaries of the military police.

17 Mr. Meder: That situation is brought about as a result of a communication received by the Company, dated August 7, 1942, and a further communication dated August the 8th, 1942.

Mr. Smokler: You are adding something on to the stipulation proposed by the Examiner?

Mr. Meder: That is right, sir.

Mr. Smokler: Well, I think the stipulation proposed by the Examiner is concise, and covers the subject.

Mr. Meder: Well, I desire to introduce Company's Exhibit 4 in evidence. I see no reason why I shouldn't.

Trial Examiner Wiener: In the absence of Petitioner agreeing to the stipulation as you have worded it?

Mr. Meder: No, even with the stipulation worded as you have worded it, and as I have tried to amend it, I still think we are entitled to have this letter of August 7 placed in the record, and I ask to have it placed in the record.

Trial Examiner Wiener: Well, in order to shorten the record, and particularly since, if Company's Exhibit 4 is not material, I see nothing in it prejudicial to Petitioner, I will receive it.

(The document heretofore marked for identification as Company's Exhibit 4, was received in evidence).

Mr. Meder: Will you mark this, please?

(The document referred to was marked for
18 identification as Company's Exhibit 5).

Q. (By Mr. Meder): I show you, witness, what has been marked for identification as Company's Exhibit 5, and ask you if you have seen that before.

A. Yes, sir.

Q. That is a photostatic copy, is it not, of a letter dated August 8, 1942, from headquarters of the Sixth Service Command, signed by Major Stewart. Right?

A. That is right.

Q. And is that another one of the letters which lead up to the militarizing of your Plant Protection men?

A. It is.

Mr. Meder: I offer in evidence Company's Exhibit 5.

Q. (By Mr. Meder): When you received that, was the second page attached?

A. Yes, sir, it was.

Q. It was the form of the agreement that was used?

A. Yes, it is.

Mr. Meder: In offering Company's Exhibit 5, let it be understood that I offer both pages.

Trial Examiner Wiener: Mr. Meder, while Mr. Smokler is examining Company's Exhibit 5, I want to ask you a question with reference to Company's Exhibit 3 in evidence. I notice that the contract was entered into as of April First, 1942, that while it is of indefinite dura-
19 tion, it does provide for termination at the expiration of the first annual period. Therefore, I ask you whether this contract, Company's Exhibit 3, is at present in effect?

Mr. Meder: I will ask the witness that.

Q. (By Mr. Meder): Is the contract at present in effect?

A. Still is, yes.

Q. You are negotiating now for a new contract, are you not?

A. Yes.

Q. But that contract is still in effect?

A. Still in effect.

Mr. Meder: I offer in evidence, Your Honor, Please, Company's Exhibit 5, both pages.

Mr. Smokler: I will make the same objection that I did to Company's proposed Exhibit No. 4.

Trial Examiner Wiener: Do you have any question with respect to the authenticity of the exhibit, Mr. Smokler?

Mr. Smokler: Well, it appears to be the same as has been introduced in other cases, and it appears, or purports, at least, to be the customary letter that was sent to the Company, to Plant Protection employees, and the oath attached purports and appears to be the same oath that has been sent to other companies. We don't question the authenticity of the exhibit. We do question its materiality.

Trial Examiner Wiener: For the reasons I gave with respect to Company's Exhibit 4, I will receive Company's Exhibit Five.

(The document heretofore marked for identification as Company's Exhibit 5, was received in evidence).

Q. (By Mr. Meder): Witness, as a result of the request of the army, state whether or not, beginning on August 19, 1942, the army started to swear in your Plant Protection men as auxiliary military police.

A. They did.

Q. Are they all sworn in as of today with the exception of one?

A. That is right.

Q. And that man is being sworn in Saturday, is that right?

A. Saturday.

Q. Of this week. And the reason he isn't sworn in is the fact he is a new employee?

A. New employee.

Q. Now when these men were sworn in, state whether or not the army caused them to sign an agreement such as is contained on Page 2 of Company's Exhibit 5.

A. Yes, they did.

Q. And Major Charles S. Stewart of the Sixth Service, carried on that work, did he not?

A. Yes, he did.

Q. State whether or not the Articles of War were read to these men.

A. They were.

Q. By the Major, or at least portions of them?

A. Yes.

Q. Were you required to place a bulletin on the bulletin board furnished by the army?

A. Yes.

Q. Have you got a copy of that?

A. Yes, I have.

Mr. Meder: Mark this, please.

(The document referred to was marked for identification as Company's Exhibit 6).

Q. (By Mr. Meder): I show you, Witness, a photostatic copy of the paper which has been marked Company's Exhibit 6, and ask you if that is the bulletin to which you referred a few minutes ago.

A. Yes.

Q. Was that bulletin posted by the Company?

A. Yes, it was.

Q. Is it still so posted?

A. Still so posted.

Q. Where have you got it posted?

A. Posted on the bulletin board in the room that the guard force uses as a meeting room.

Mr. Meder: Company offers in evidence Company
22 Exhibit 6.

Trial Examiner Wiener: Have you any objection to Company's Exhibit 6?

Mr. Smokler: I have the same objection to Company's Exhibit 6 that I had to Company's Exhibits 4 and 5.

Trial Examiner Wiener: I want to make clear, if it isn't already, that in admitting these Exhibits 4, 5, and 6, I am not ruling on their materiality. They are relevant to the issues, and the Board may decide to give them whatever weight it chooses. I accept and receive Company's Exhibit 6.

(The document heretofore marked for identification as Company's Exhibit 6 was received in evidence).

Q. (By Mr. Meder): Now then, following August 19, 1942, was military training given by the army to these Plant Protection men?

A. Yes.

Mr. Smokler: Mr. Examiner, may I have an objection to this whole line of questioning on the basis that it is immaterial to the determination of the issues in this case? I presume you are going to show that the plant guards are a part of the military and auxiliary police force?

Mr. Meder: Yes.

Mr. Smokler: I want to object to this entire line of questioning.

Trial Examiner Wiener: Off the record.

(Discussion off the record.)

23 Trial Examiner Wiener: On the record.

Mr. Smokler: I offer another objection to this line of questioning, since I indicated earlier that the Petitioner was willing to stipulate that the Plant Protection—plant guards, are auxiliaries to the military police.

Trial Examiner Wiener: Would you indicate in the face of Petitioner's objection, Mr. Meder, what your objective in proof is?

Mr. Meder: I want to build a record here to show what the difference is between the way in which these men operate now and the way they operated prior to the time that they were made military police.

Trial Examiner Wiener: And while you were off the record you indicated your proofs would be brief?

Mr. Meder: That is correct.

Trial Examiner Wiener: I will overrule the objection, then, to permit the answer; however, reserving the Petitioner's counsel the right to object specifically to any particular question which you may ask, Mr. Meder.

Mr. Smokler: I take it, Mr. Examiner, that I have an objection to this entire line of questioning?

Trial Examiner Wiener: It has been noted, and you are familiar with the practice which permits an automatic exception to adverse rulings.

Q. (By Mr. Meder: In giving this military train-
24 ing, they have given training in sighting and shooting, have they not?

A. They are doing that now.

Q. Doing that now. As a matter of fact, you sent Assistant Chief Richards over to Chicago, did you not, to attend a military training instructor's school carried on by the army?

A. That is right.

Q. He was over there a week, was he not?

A. He was.

Q. These men are all required now to wear arm emblems designating the fact that they are auxiliary police, and they do so wear them, do they not?

A. They do.

Q. They have the right now to carry guns, is that correct?

T. They have.

Q. They didn't carry guns before, did they?

A. No.

Q. You are getting guns for them as rapidly as you can purchase them, is that correct?

A. That is right.

Q. They are uniformed?

A. Yes, sir.

Q. They had been uniformed, though, had they not, ever since the war had started, or shortly after the war had started?

A. Shortly after the war had started.

Q. They are required by the army to carry cards, are they not?

A. Yes.

Q. Which identify them?

A. Yes, sir.

Q. Those cards carry the authentication of the QMC, don't they, quartermasters?

A. Yes, sir.

Q. What grade or authority, and what is the difference between the duties of these men now, and the duties of these men prior to the war, prior to their being sworn in as auxiliary military police? Take the matter of arrests, for instance, do you know whether they now have the right of arrest?

A. They have the right to arrest now, which they didn't have before.

Q. Have they the right to carry firearms?

A. Yes.

Q. Are they subject to military rather than civil trial?

A. They are.

Q. Subject to court martial?

A. Yes, sir.

Q. They are required now to identify all workmen and any others who come in and out of the plant, are they not?

A. Yes.

Q. And those persons have to identify themselves, do they not?

A. They do.

Q. And that is true, is it not, as well, of any
26 automobiles or any trucks?

A. Yes.

Q. That come in or out of your plants?

A. Yes.

Q. They are also required, are they not, to examine parcels and lunch boxes of employees as they come in, and as they leave the plant?

A. Yes, sir.

Q. That was not formerly true, was it?

A. No.

Q. They escort, do they not, all railroad cars as they come into the yards of the plant?

A. To some extent, they do.

Q. To what extent do they?

A. They do at the main entrance to the plant.

Q. Main entrance to the plant. And are they pledged to obey all military rules and regulations?

A. Yes.

Q. They are required to take this training you talked about?

A. Yes, sir.

Q. As a matter of fact, aren't they given training every Saturday now?

A. Every Saturday, yes.

Q. The uniforms are now compulsory?

A. Yes, sir.

27 Q. They were not heretofore, is that correct?

A. That is right.

Q. What do you know about this deferment?

A. Well, as I understand it, from the army they would be deferred.

Mr. Smokler: Well, I object to that.

Trial Examiner Wiener: Sustained.

Q. (By Mr. Meder): Do you have any purpose in trying to defer any of them?

A. No, I wouldn't.

Mr. Meder: All right, withdraw the question.

Q. (By Mr. Meder): What have these men got to do with discharges? Supposing they catch some one in sabotage, or somebody disobeying a rule in the plant, or find them rioting, have they the right to make recommendations as to discharges?

A. Yes, they have.

Q. Going back to that contract, which is Company's Exhibit 3, this same language to which I called attention in Section 2 of Article I has been in the previous contracts which the Company has had with the International Union Local 174, has it not?

A. Yes, it was.

Q. Is there Government property on your premises?

A. Yes.

Q. Made up of what?

A. Well, there is tires, inertia starters, fifth
28 wheels, skid plates.

Q. Is it a part of the duty of these men now to protect that property?

A. Yes, it is.

Q. Do you know whether or not it is a part of the duty of these men now, not alone to protect the premises of the Company, but property in and around the premises of the Company, if anything occurring on outside property would in any way threaten the premises of the Company?

A. It is.

Q. That wasn't true heretofore, was it?

A. No.

Q. Now as far as discharging these men is concerned, does the Company still have full control over their discharges, or are the discharges subject now to the control of the army, if it desires to exercise such control?

A. Subject to the control of the army if they desire to exercise such control.

Q. You know that an attempt to intimidate these men, or to reduce or nullify their efficiency, or interfere with the performance of their mission, constitutes a violation of Federal law?

A. Yes, sir.

Q. That didn't used to be true, did it?

A. No.

29 Q. These men have all been fingerprinted, photographed, and signatures secured at the request of the army, is that correct?

A. That is right.

Q. That wasn't true heretofore, was it?

A. No.

Q. These men have the right to arrest without a warrant for violation of the sabotage act, do they not?

A. Yes.

Q. Or the violation of the espionage act, is that correct?

A. Yes, sir.

Q. They have the obligation to serve with the army in any emergency that may arise, is that true?

A. That is correct.

Mr. Meder: That is all.

Trial Examiner Wiener: Cross examination?

Mr. Smokler: Yes.

CROSS EXAMINATION

Q. (By Mr. Smokler): What does the Company now manufacture, Mr. Lutton?

Mr. Meder: That has all been stipulated, hasn't it?

A. Motor trucks for the army.

Q. (By Mr. Smokler): Motors and lorries, are they, in the nature of lorries?

A. No, I don't know just what you mean by a lorry.

Q. Well, you manufacture trucks?

30 A. Yes.

Q. That was your business prior to the war, is that correct?

A. That is right.

Q. Mr. Lutton, the protection of the plant against any

hazard is the responsibility of the Company, is it not?

A. Yes.

Q. How many of the 18 plant protection employees were employed by the Company prior to August 19, 1942?

A. Prior to that?

Q. Yes.

A. I believe about ten. I couldn't say definitely.

Q. Could you tell us briefly how long on an average the ten employees were employed by the Company?

A. Well—

Q. (Interposing): Let me put it this way. Of those ten employees the majority of them had been employed by the Company for a good many years, is that right?

A. For a number of years, that is correct.

Q. Since August 1942 they have been wearing uniforms and are required to conform with the other regulations promulgated by the army, is that correct?

A. Yes.

Q. In fact, they wore uniforms before that time?

A. Yes, they wore uniforms before that time.

Q. But you termed them, prior to August, 1942,
31 watchmen and firemen, and so on, is that correct?

A. That is correct.

Q. Since August, 1942, you now call them plant guards, is that correct?

A. Plant Protection men.

Q. Plant Protection employees?

A. That is correct.

Q. Now it is true, isn't it, Mr. Lutton, that you can swear in any of your employees as members of the auxiliary military police, provided they are physically able to perform the mission and duties of the auxiliary military police?

Mr. Meder: May we have the question before the answer?

Trial Examiner Wiener: Yes. Will you read the question?

(Question read).

Trial Examiner Wiener: Now are you objecting to the question, Mr. Meder?

Mr. Meder: I object to the question. I don't know as I have any right to object to it, but what you mean, you can have the army swear them in?

Mr. Smokler: That is right.

Mr. Meder: No objection, if that is what he means.

Trial Examiner Wiener: In answering the question, Witness, note that the language has been altered by counsel.

A. The army can swear them in, but I couldn't.

Q. (By Mr. Smokler): However, the request
32 would emanate from you, would it not?

A. No, emanate from the army.

Q. Or it may emanate from you as well, but the army would have to do the final swearing in?

Mr. Meder: Well, now, there are three questions involved there. May we have one of them? I object to the question for the reason that there are several questions in one.

Trial Examiner Wiener: That is a little involved, Mr. Smokler. If you won't be embarrassed, would you rephrase it?

Mr. Smokler: I am not embarrassed at all.

Q. (By Mr. Smokler): Who determines the number of Plant Protection employees that you are to employ or to have employed?

A. The Company.

Q. The Company does?

A. Yes.

Q. Do you, for example, if you now employ 15 or 18, and desire to employ 22, do you seek the permission of the army to employ the additional four Plant Protection employees?

A. No.

Q. The employment of all the Plant Protection employees is made through your regular personnel employment channels, is that correct?

A. That is right.

Q. You judge and determine and decide whether or not a particular individual should or should not be

33 employed as a Plant Protection employee, is that correct?

A. That is correct, but at the discretion of the army, if they want to reject them.

Q. In other words, you do the employment, subject to the discretion of the army to discharge them, if they so see fit?

A. That is correct.

Q. Has the army exercised its discretion with respect to any of your 18 Plant Protection employees?

A. No, it hasn't.

Q. You have control over your Plant Protection employees insofar as regulating their hours of work, is that correct?

A. Correct.

Q. Their wages?

A. Correct.

Q. Assignment to shifts or posts?

A. That is correct.

Q. And you have the right to discharge them or discipline them, is that correct?

A. That is correct.

Q. You have recently received a communication from the army, have you not, that auxiliary military police or Plant Protection employees are permitted to bargain collectively?

A. No.

Mr. Meder: Are you asking him to produce it?

Mr. Smokler: I am asking him whether he is fa-

34 miliar with a communication from the army which contains the statement that I have just put to the witness.

A. I have heard of such a statement.

Q. (By Mr. Smokler): Are you familiar with the contents of Circular 15?

Mr. Meder: Are you going to offer Circular 15 in evidence?

Mr. Smokler: I would if I had an additional copy. I think it ought to be offered in evidence.

Mr. Meder: I have no objection to it.
Mr. Smokler: Have you got an extra copy?
The Witness: This is an extra copy.
Trial Examiner Wiener: We have a question pending, I think, haven't we, Miss Reporter?
Mr. Meder: We are going to stipulate now, if you let us.
Trial Examiner Wiener: Off the record.

(Discussion off the record).

Trial Examiner Wiener: On the record.
Mr. Smokler: Will you mark this?

(The document referred to was marked for identification as Petitioner's Exhibit 1).

Q. (By Mr. Smokler): Mr. Lutton, I show you Petitioner's Exhibit—

Mr. Meder (Interposing): I am willing to stipulate it will go in as an exhibit, and we have received it, as part of the regulations under which we operate. It will
35 save a lot of time.
Trial Examiner Wiener: You want to offer it, Mr. Smokler?
Mr. Smokler: All right. I offer Petitioner's Exhibit 1 in evidence.
Mr. Meder: No objection.
Trial Examiner Wiener: Petitioner's Exhibit 1 will be received.

(Thereupon the document heretofore marked for identification as Petitioner's Exhibit 1 was received in evidence).

Q. (By Mr. Smokler): I take it you are familiar with Petitioner's Exhibit Number 1?
A. Yes.

Mr. Smokler: I call the Board's attention to Page 8 of Petitioner's Exhibit Number One, which deals with labor relationships concerning Plant Protection employees.
I also call the Board's attention to Page 7 of Petitioner's Exhibit Number One, Section B, entitled "Employer and Employee Relationship."

I also call the Board's attention to Section E, contained on Page 8 of Petitioner's Exhibit Number One.

I call the Board's attention to Page 10, Section E-1, under "Arms", which states that—

Mr. Meder (Interposing): It speaks for itself, the Exhibit speaks for itself.

36 Mr. Smokler: I guess it isn't necessary for me to state it, but I have it marked so the Board will be able to find it.

Trial Examiner Wiener: Are you going to quote?

Mr. Smokler: Just one sentence.

Mr. Meder: I object to one sentence being quoted out of a long page.

Trial Examiner Wiener: I will sustain the objection if you are going to brief the matter; if not, I will let you read it.

Mr. Smokler: I don't know whether we are going to brief it or not.

Mr. Meder: You will after you get my brief.

Mr. Smokler: I want to state the sentence on the record so the Board will be able to find the section I am making reference to. If Mr. Meder's objection is sustained, I will submit it as proof.

Mr. Meder: I don't desire to be facetious in what I am about to say, but I want to call the Board's attention to the whole of the exhibit. I think the whole of the exhibit is very important, no particular page, or any particular part of any page. As I understand it, the whole of the exhibit is in evidence.

Trial Examiner Wiener: That is right, Mr. Meder.

Mr. Smokler: Well, to cut this short, Mr. Examiner, I will repeat what I want the Board's attention to be

37 called to.

Mr. Meder: I object to his repeating it. You are just making this a long record and taking up a lot of time. Why repeat it?

Trial Examiner Wiener: Why don't you state the conclusions which you draw from this exhibit as a part of your position, Mr. Smokler? I certainly won't object to your

doing that. What do you think the exhibit proves in support of your contentions?

Mr. Smokler: The petition proves what the Board has already found to be the case, that is, the employer-employee relationship still exists with respect to Plant Protection employees since August 19, 1942, and that substantially it might be said that the Plant Protection employees are under the supervision and instruction of the employer and not the army.

Trial Examiner Wiener: Now will you continue with your cross?

Mr. Smokler: Yes.

Q. (By Mr. Smokler): The guns which you are now attempting to provide the Plant Protection employees are purchased by the Company, are they not?

A. That is right.

Q. And the Company purchases the uniforms of its Plant Protection employees?

A. Yes, sir.

Q. The only time that a Plant Protection employee can make an arrest is in a case of sabotage, or sus-
38 pected sabotage, or suspected espionage, is that correct?

A. (No response).

Q. Their power to arrest, in other words, is confined to those two matters?

A. Why, I don't know. I think they can make arrests for other causes inside the plant.

Q. Well, do you know that to be the case, or are you merely surmising?

A. I am quite positive of it.

Mr. Smokler. No further questions.

Mr. Meder: That is all.

Trial Examiner Wiener: You are excused.

(Witness excused).

Mr. Meder: The Company rests.

Trial Examiner Wiener: I think it can be easily inferred from the testimony already given that the Company has

what are known as war contracts, is that right, Mr. Meder?

Mr. Meder: That is correct, sir.

Trial Examiner Wiener: And if the Board should find a question concerning representation of the appropriate unit in this testimony, will the Company furnish the Regional Director with a list of eligible voters as the Company sees it?

Mr. Meder: It will do so under protest.

Trial Examiner Wiener: Does the Petitioner intend to file a brief?

39 Mr. Smokler: Petitioner does not intend to file a brief unless the Company files one, then it will file a brief.

Trial Examiner Wiener: Does the Company intend to file a brief?

Mr. Meder: Yes, sir.

Trial Examiner Wiener: Then I take it both parties intend to file them, is that correct?

Mr. Smokler: That is correct. Are you prepared at all, Mr. Examiner, to conclude the hearing?

Trial Examiner Wiener: Unless there is something further that either party desires to offer.

Mr. Smokler: I would like to have a very brief recess to determine whether I have anything additional to offer or not.

Trial Examiner Wiener: How long do you want?

Mr. Smokler: Five minutes.

Trial Examiner Wiener: Five-minute recess, gentlemen.

(A short recess was taken).

Trial Examiner Wiener: On the record.

The Company desires to recall Mr. Lutton briefly.

FORBES W. LUTTON,

a witness called by and on behalf of the Company, having been previously duly sworn, was examined and testified as follows:

RE-DIRECT EXAMINATION

Mr. Meder: Will you mark this, please?

(The document referred to was marked for
40 identification as Company's Exhibit 7).

Q. (By Mr. Meder: I show you a paper which has been marked for identification, Company's Exhibit 7, and ask you if you have seen that before?

A. Yes.

Q. Is that another one of the bulletins furnished you by the United States Headquarters District Number One, which you placed on the bulletin board?

A. Yes.

Q. That is dated April 12, 1943?

A. Yes, sir.

Mr. Meder: I offer in evidence Company's Exhibit 7.

Mr. Smokler: I will offer the same objection to the Company's proposed Exhibit 7, as I offered to Company's Exhibits 4, 5, and 6.

Trial Examiner Wiener: For the same reasons previously stated, I will receive Company's Exhibit 7.

(The document heretofore marked for identification as Company's Exhibit 7, was received in evidence).

Q. (By Mr. Meder): It is a part of the duty of the Plant Protection men, is it not, that if there is any trouble in the plant, they are supposed to go in and quiet the trouble?

A. Yes.

Q. They have to evict employees if there is any
41 eviction to take place?

A. Yes.

Q. If they see any work around there being improperly done, they have to report on that, do they not?

A. Yes, sir.

Q. Any operations not being carried on safely, they have to report on those, do they not?

A. Yes, sir.

Q. Would they have a right to stop a man from carrying on an operation in an unsafe manner—

Mr. Smokler (Interposing): I object to the question—

Q. (By Mr. Meder, continuing): —or would they report on it to the foreman, do you know?

Mr. Smokler (Continuing): —as leading and suggestive and calling for a conclusion.

Trial Examiner Wiener: Will you re-phrase the question?

Mr. Meder: I told you in asking the questions, I was going to ask them quite leading because I want to get through them.

Q. (By Mr. Meder): What authority have these Plant Protection men got as concerns any employees whom they would see doing the work, for instance, in an unsafe way?

A. Why, I believe they could stop them, take them to the foreman.

Trial Examiner Wiener: Do you know whether
42 that has always been true?

Q. (By Mr. Meder): That has always been true, hasn't it?

A. More or less.

Q. If a man were found intoxicated in the plant, they would be the ones to evict him, would they not?

Mr. Smokler: I object to that as being leading.

A. That is right.

Q. (By Mr. Meder): If a man were found intoxicated in the plant, the Plant Protection men would be the ones to evict him?

A. The Plant Protection man would.

Q. And that has occurred, has it not?

A. It has.

Q. Now if you had a strike in that plant of production workers, state whether or not it would be necessary to still use your plant guards?

A. I believe it would as long as it is government property to protect.

Q. It would be more than ever necessary to use them, would it not?

A. Yes.

Q. State whether or not it would be necessary for

them to go through picket lines in order to assume their duties.

A. They would have to assume their duties in all troubles.

Q. State whether or not in case of a strike of production workers it would be necessary for the proper
43 protection of the plant to have these Plant Protection men at work.

A. It would.

Mr. Meder: That is all.

Trial Examiner Wiener: Recross?

Mr. Meder: While we are waiting, in case of quarrels among workmen, fights among workmen, state whether or not it would be up to the Plant Protection men to stop such fighting.

A. It would.

Q. (By Mr. Meder): And it would be necessary to eject the men from the plant?

A. The Plant Protection would have to eject them.

Mr. Smokler: Any further questions, Mr. Meder?

Mr. Meder: No.

RE-CROSS EXAMINATION

Q. (By Mr. Smokler): In case of the intoxicated employee that Mr. Meder referred to in direct examination, who used to eject intoxicated employees prior to August the 19th, 1942?

A. The Plant Protection men did it then.

Q. They were called watchmen then, were they?

A. Yes.

Q. Or guards. As a matter of fact, the instances that Mr. Meder gave, in the main, were formerly the functions of the watchmen and the guards, were they not?

Mr. Meder: Wait a minute. I object to that question. I don't think it is a clear question.

44 Trial Examiner Wiener: Sustained. I think if you ask which particular duties, the question will be unobjectionable.

Q. (By Mr. Smokler): In case of quarrels among the

employees, it was formerly the function of the watchmen to intervene, to intercede in such cases, was it not?

A. Well, it was to a certain extent. Before that we didn't have enough watchmen always to intervene; it was generally up to the foreman.

Q. I see.

A. While it would have been up to a watchman, if they had been there, perhaps.

Mr. Smokler: That is all.

Mr. Meder: That is all.

Trial Examiner Wiener: Just a moment, Mr. Lutton, Within the next 30 or 60 days, do you anticipate a substantial increase or decrease in the employment of Plant Protection men?

The Witness: No, I don't.

Trial Examiner Wiener: You are excused.

(Witness excused).

Trial Examiner Wiener: Do you have any further witnesses, Mr. Meder?

Mr. Meder: No, we rest.

Trial Examiner Wiener: Does either party have anything further on this?

Mr. Smokler: Petitioner has nothing further, Mr. Examiner.

Trial Examiner Wiener: In view of the fact that both parties are going to file briefs, does either attorney desire to make a brief closing statement?

Mr. Meder: No.

Trial Examiner Wiener: None for the Company. Mr. Smokler, do you desire to make one?

Mr. Smokler: Yes.

Trial Examiner Wiener: All right, sir. And Mr. Meder may reply after he has heard it, if he cares to.

Mr. Meder: I am going to file a brief. I am not going to take up any time now.

Mr. Smokler: I will waive mine.

Trial Examiner Wiener: All right, gentlemen, the hearing is concluded. Thank you very much.

(At 12:30 o'clock p. m., Friday, May 14, 1943, the hearing in the above-entitled matter was closed.)

RESPONDENT'S EXHIBIT No. 1

CONSTITUTION
of the
INTERNATIONAL UNION
United Automobile, Aircraft
and
Agricultural Implement Workers
of America,
(UAW-CIO)
AND
LAWS GOVERNING LOCAL UNIONS

(Seal)

Adopted at Chicago, Ill.
August, 1942

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ARTICLE 6
MEMBERSHIP

SECTION 1. The International Union shall be composed of workers eligible for membership in the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO).

SECTION 2. Any person eligible to become a member of the International Union who is not affiliated with any organization whose principles and philosophy are contrary to those of this International Union as outlined in the Preamble of this Constitution, may apply for membership to the Local Union having jurisdiction over the plant in which he or she is employed. The applicant must, at the time of application, be an actual worker in and around the plant. All applicants for membership in any Local Union of the International Union shall fill out an official application provided by the International Union, answering all questions contained in such application, and sign a promise to abide by all laws, rules and regulations and the

Constitution of the International Union. All applications thus received shall be referred to the Local Union for consideration. No application shall receive consideration of a Local Union, unless the applicant has been continuously employed for a period of at least thirty days immediately preceding action or consideration thereof. (This does not apply to shops in the process of organization, on strike or victimized by lockout.) Applications for membership rejected by the Local Union shall not be reconsidered until thirty days have elapsed.

• • • • • • • • • • •

SECTION 4. The original application signed by each member shall be retained by the Local Union for its record and official receipt shall be given to each new member for all moneys paid. All receipts shall be made out in duplicate, the original to be given to the member, the duplicate to be retained by the Local Union and made available to the International Union upon request. These duplicate receipts may be destroyed after a Local Union audit upon written approval of the International Secretary-Treasurer.

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SECTION 9. All members of the Local Union are also members of this International Union and subject to the orders, rulings and decisions of this International Union and the properly constituted authorities of the same.

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ARTICLE 18

CONTRACTS AND NEGOTIATIONS

SECTION 1. It shall be the established policy of the International Union to recognize the spirit, the intent and the terms of all contractual relations developed and existing between Local Unions and employers, concluded out of conferences between the Local Union and the employers, as binding upon them. Each Local Union shall be required to carry out the provisions of contracts so negotiated.

INTERNATIONAL OFFICES, DETROIT, MICH.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

Name ..... L. U. No. .....
Address ..... City ..... State .....
Where Employed ..... How Long .....
Class of Work ..... Dept. No. ..... Clock No. .....
Present Rate of Pay ..... Shift .....
Were You Ever a Member of UAW-CIO ..... L. U. No. .....
(Yes or No) (If yes—what local)
New ☐ Reinstated ☐ Amount Paid .....
Date ..... Presented by .....

(over)

OFFICIAL APPLICATION FOR MEMBERSHIP

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

Inernational Offices, Detroit, Mich.

L. U. No. ..... TEMPORARY RECEIPT
Received of ..... Amt. $ .....
Date ..... Received by .....
(This Receipt Should be Exchanged for Official Receipt When Initiated.)

RESPONDENT'S EXHIBIT No. 2

RESPONDENT'S EXHIBIT No. 3

AGREEMENT

THIS AGREEMENT, entered into this 1st day of April, 1942, between FEDERAL MOTOR TRUCK COMPANY, of Detroit, Michigan (hereinafter referred to as the "COMPANY"), and the INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, Affiliated with the Congress of Industrial Organizations, and its LOCAL 174 (hereinafter referred to as the "UNION").

WITNESSETH, the parties hereto mutually agree as follows:

ARTICLE I.

RECOGNITION

SECTION 1. The Company recognizes International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 174, affiliated with the C. I. O., as the exclusive bargaining agency for all the factory employees of the Company excepting those included within the classes mentioned in the following Section of this Article, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment or other conditions of employment, provided that any individual employee shall have the right at any time to present grievances to the Management.

SECTION 2. It is mutually agreed for the purposes of this Agreement that the term "employee" shall not include foremen, assistant foremen having the right to hire and fire, office timekeepers, time study men, clerical employees, plant protection employees or confidential salaried employees, and that the Union will not solicit or accept the same for membership.

* * * * * * * *

ARTICLE VIII

DURATION

This Agreement shall become effective on the day and year first above written, and shall continue in full force and effect for a period of one (1) year, and shall continue thereafter in full force and effect from year to year un-

less notice of termination shall be given by either party thirty (30) days before the end of the year, or on any anniversary of that date. However, either party may give a thirty (30) day notice in writing of a desire to amend or modify any of the terms of the Agreement and a meeting to consider such proposal shall be had within ten (10) days. If an Agreement can be reached on such proposal, the contract will be so amended or modified.

FEDERAL MOTOR TRUCK COMPANY

By (Signed) T. R. LIPPARD
By (Signed) F. L. RUDDON
By (Signed) J. D. PORTER

INTERNATIONAL UNION, UNITED AUTOMOBILE AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O.

By (Signed) MICHAEL J. MANNING,
President, West Side Local 174 UAW-CIO
By (Signed) RICHARD T. LEONARD,
Director Region 1A, UAW-CIO

SHOP COMMITTEE

FEDERAL MOTOR TRUCK DIVISION
WEST SIDE LOCAL 174, UAW-CIO

(Signed) J. E. FALLIS
(Signed) J. E. POLLOCK
(Signed) JOSEPH W. BONNO
(Signed) C. G. NEAL
(Signed) LEO STENCIL
(Signed) KARL KOLBERG
(Signed) HAROLD JOHNSON
(Signed) A. WARDLAW
(Signed) GEORGE DEADMAN

uopwa-26-cio
meg 4-15-42

RESPONDENT'S EXHIBIT No. 4

HEADQUARTERS, SIXTH SERVICE COMMAND
INTERNAL SECURITY DIVISION
PLANT PROTECTION BRANCH
QUARTERMASTER'S SECTION
Room 1855, 20 N. Wacker Drive
CHICAGO, ILLINOIS

In reply refer to:
QM 004-PP

August 7, 1942

SUBJECT: Military Organization of Plant Guard Forces.

TO: Facilities of Importance to War Department Procurement.

1. The Secretary of War has directed that the guard forces at all plants assigned for protective survey and inspection to the Chiefs of Supply Services and to the Commanding General, Material Command, Army Air Forces, be organized, drilled and instructed as military units subject to the Articles of War.

2. These guard forces will be organized as civilian auxiliary to the Military Police in all plants where the possibility of sabotage is greatest, giving first priority to those plants which are most vulnerable from the standpoint of sabotage activities. The organization of those civilian guard forces will be extended as conditions permit.

3. At the time any guard force is organized as a civilian auxiliary to the Military Police, the commanding officer having jurisdiction over the guard force will:

(a) Cause the Articles of War prescribed by Article 110 thereof to be read and explained to each member of the guard force.

(b) Issue orders and regulations setting forth the duties and responsibilities of the guard force.

(c) Organize each guard force with a member of the Army of the United States in command and cause each force to be drilled and instructed with a view to supplementing the Army in resisting attack on war material, war premises, and war utilities which the force is assigned to guard.

(d) Require each member of the guard force to give a pledge of loyalty to the United States and to execute an agreement acknowledging that such Articles of War are understood by him and that he is subject to military law as long as he remains a member of the guard force.

4. The organization of civilian plant guards under the command of a member of the Army of the United States should not cause any change in existing systems of hiring or of compensation, of existing systems for providing uniforms and equipment, or of providing transportation and quarters.

5. While engaged in normal protective duties the status of a civilian guard force remains unchanged. When such a guard force or any member or group thereof, is acting under the command and direction of constituted military authority, such action shall be deemed to be in the capacity of a civilian auxiliary to the Military Police.

6. A commissioned officer of the Army of the United States will call at your plant for the purpose of organizing your guard force as a civilian auxiliary to the Military Police. This officer will notify you in advance of his arrival in sufficient time to enable the assembling of the guard so that the agreements with each guard may be signed and the reading of the Articles of War may be accomplished.

7. It is requested that your guard force be given this information and that they be fully apprised of the conditions thereof. Copies of the Articles of War and sample agreement are inclosed.

For Brig. General W. E. Guthner, U.S.A.,
Director of Internal Security

CHARLES S. STEWART
Major, C. E.
Chief of Section.

2 Incls.
Articles of War.
Agreement

RESPONDENT'S EXHIBIT No. 5

HEADQUARTERS, SIXTH SERVICE COMMAND
INTERNAL SECURITY DIVISION
PLANT PROTECTION BRANCH
QUARTERMASTER'S SECTION
Room 1855, 20 N. Wacker Drive
CHICAGO, ILLINOIS

Mr. Lutton
Carter

Mr. Lippard
Keenan

In reply refer to:
QM 004-PP

August 8, 1942

SUBJECT: Military Organization of Plant Guard Forces.
TO: Facilities of Importance to War Department Procurement.

1. Reference is made to communication from this office dated August 7, 1942, file and subject as above.

2. MAJOR CHARLES S. STEWART has been designated as the commissioned officer of the Army of the United States to organize your guard force as a civilian auxiliary to the Military Police, and will call at your plant during the week of August 9, 1942 for that purpose.

3. In order that the process of organization may be accomplished without delay upon the arrival of the designated officer, it is requested that you prepare a triplicate set of the inclosed agreements for each member of your guard force. The date and signature of the guard are to be left open and will be executed on the day of organization, the signature of each guard being witnessed by the officer.

For Brig. General W. E. Guthner, U. S. A.,
Director of Internal Security:

CHARLES S. STEWART
Major, C. E.
Chief of Section.

45 Incls. (Form 93-3)

Respondent's Exhibit No. 5

HEADQUARTERS, SIXTH SERVICE COMMAND
INTERNAL SECURITY DIVISION
PLANT PROTECTION BRANCH
QUARTERMASTER'S SECTION
Room 1855, 20 N. Wacker Drive

Date.....

Agreement between the United States of America and

.....

(Plant Guard)

In order that the existing military forces of the United States may be most effectively employed in combat activity against the enemies of the United States, the United States is approving the employment of certain guards as a civilian auxiliary to the military police for the purpose of guarding and protecting war material, war premises and war utilities from injury or destruction by the enemy or otherwise, including the making of arrests, as peace officers for violations of Federal laws, as well as for violations or orders and regulations issued by military authority. The United States requires that only persons physically fit, well trained in the use of arms and in the duties incident to their position, and of unquestionable loyalty to the United States be so employed.

Now, therefore, I....., who have been or am about to be employed by..... as a guard at.....for the purpose of guarding war material, war premises, and war utilities, in consideration of my employment or the continuation of my employment, do agree with the United States of America that:

(1) I will support and defend the Constitution of the United States against all enemies, foreign and domestic;

(2) I will bear true faith and allegiance to the Constitution of the United States;

(3) I will well and faithfully discharge my duty as a

civilian auxiliary to the military police to protect war material, war premises, and war utilities against all enemies, foreign and domestic, and will obey any orders issued in connection therewith by the President, as Commander-in-Chief of the Army and Navy of the United States, and by his duly authorized officers;

(4) I acknowledge that the appropriate Articles of War have been read and explained to me, and that in the performance of my duty to protect such war material, war premises, and war utilities, I am subject to military law during the period of my employment.

.....

(Signature of Plant Guard)

.....

(Signature of Army Officer)

RESPONDENT'S EXHIBIT No. 6

(Posted on Bulletin Board)

BULLETIN

The Military Training of Plant Guards will consist of such of the subjects listed below as the plant guard officer finds appropriate for each guard force giving due consideration in each instance to the character, experience, previous training, and qualifications of the force as well as the locality and geography of the plant, its importance in the prosecution of the war, and all other pertinent considerations.

1. Basic Military subjects in which training may be given include—
   (a) Military courtesy and discipline; Article of War.
   (b) Defense against air and parachute attack.

(c) Interior and special guard duty (military only).
(d) Personal encounters.
(e) Inspections.
(f) Use of weapons—hand grenades, pistol, police riot club, shotgun, tommy gun (where applicable).
(g) Military police—organization, duties, powers of arrest, use of force, etc.

2. Advanced subjects in which training may be given includes—
(a) Riot formations.
(b) Approach marches.
(c) Other applicable subjects included in military police tactical unit training.
(d) Tactical problems which may be given from time to time to determine the effectiveness of the guard force in emergency situations.

S. D. Knox, 1st Lt., Inf.
(Plant Guard Officer)

April 17, 1943.

RESPONDENT'S EXHIBIT No. 7

UNITED STATES ARMY
HEADQUARTERS DISTRICT No. 1
SIXTH SERVICE COMMAND, S. O. S.
475 Federal Building
Detroit, Michigan

Guard Order No. 1

To the Auxiliary Military Police at Federal Motor Truck Company

1. On 8/19/42 the guard forces at this plant were activated by the War Department as Auxiliary Military Police; and for military purposes will be commanded, drilled, and instructed as military units.

Respondent's Exhibit No. 7

2. All members of the guard force are subjected to the Articles of War and may be court martialed or otherwise punished for violations thereof.

3. Effective on this date 3/30/43, a commissioned officer of the Army of the United States has been placed in command. Although in command at all times, this officer has not superseded the civilian guard officers and normally will exercise direct control only in matters relating to military instruction and duties as Auxiliary Military Police.

4. The mission of this guard force is to provide protection for this plant. In addition to its normal functions the force of any member thereof whether on or off duty is available for military use in any emergency, whether it be the result of flood, conflagration, or other disaster; internal disorders hazardous to the plant property or its production; or enemy action of any nature. *No conflicting interest of any kind will be permitted to interfere with the successful accomplishment of this mission.*

5. The Government of the United States regards the protection of this plant and its production as essential in the successful prosecution of the war. The Auxiliary Military Police are ordered to provide this necessary protection and to ward off danger or threat of danger of any kind and from any source. If force must be used to accomplish this result, it will be used only to the extent reasonably necessary.

6. No member of the Auxiliary Military Police may resign without the written approval of the plant guard officer. Inattention to duty, failure to attend required drill, and conduct, unbecoming to the service may be cause of dismissal and the denial of a Certificate of Meritorious Conduct.

For the Commanding Officer,

April 12, 1943

S. D. Knox, 1st Lt., Inf.
(Plant Guard Officer)

UNION'S EXHIBIT No. 1

UNITED STATES ARMY
HEADQUARTERS DISTRICT No. 1
SIXTH SERVICE COMMAND, S. O. S.
475 Federal Building
Detroit, Michigan

April 22, 1943

Federal Motor Truck
5780 Federal Avenue
Detroit, Michigan

Gentlemen:

Inclosed herewith copy of Circular No. 15, Headquarters, Army Service Forces, War Department, Washington, D. C., dated March 17, 1943, subject "Auxiliary Military Police", for the information of your company as a matter pertaining to the organization and control of your plant guard.

It is requested that this Circular No. 15 be brought to the attention of the proper officials responsible for the functioning of your Plant Guard Forces, so that they may familiarize themselves with the duties and responsibilities of the plant guards as members of the Auxiliary Military Police, United States Army.

Respectfully yours,

A. M. Krech,
Colonel, Cavalry,
District Commander.

Incl-1
Cir. No. 15

(Cir. 15)

Union's Exhibit No. 1

WAR DEPARTMENT
Headquarters, Army Service Forces
Washington

Circular No. 15 March 17, 1943

AUXILIARY MILITARY POLICE

Circular No. 52, Headquarters, Services of Supply, August 28, 1942, subject, "The Military Organization of Plant Guard Forces," is rescinded, and the following substituted therefor:

1. *Purpose of military organization.—a.* Executive Order No. 8972, December 12, 1941, authorizes the Secretary of War (and the Secretary of the Navy) "to establish and maintain military guards and patrols, and to take other appropriate measures, to protect from injury and destruction" certain strategic premises, materials, and utilities. Accordingly, the Secretary of War directed the military organization of plant guard forces as Auxiliary Military Police (see attached letter, The Adjutant General's Office, AG 231.43 (7-2-42) MSSPAAM-M, July 2, 1942, subject, "Military Organization of Plant Guard Forces.") The purpose is to increase the authority, efficiency, and responsibility of guard forces at plants important to the prosecution of the war, and through military training to provide auxiliary forces throughout the United States to supplement the Army in wartime emergency situations.

b. Nothing in this circular will be construed as modifying the responsibility of plant managements 'for providing adequate protection at all times against all hazards," (par. 4, Memorandum No. S380-4-43, Office of the Adjutant General, Feb. 18. 1943, subject, "Responsibilities for Internal Security.") The plant guard officer (see par. 4*d*) may, however, take appropriate action through the plant management to correct any condition deemed by him to result in or threaten defective or inadequate performance by the guard forces of its ordinary protective duties.

c. The term "plants" as used in this circular includes

civilian plants and installations important to the prosecution of the war; War Department plants, posts, camps, and stations; civilian or municipal plants and facilities essential to power, communication, and transportation; other facilities and installations deemed important to the prosecution of the war.

d. The phrase "plants assigned for protective survey and inspection" used in paragraph 1, attached letter, refers to plants and facilities on the Master or Service Command Responsibility List. Before the guard forces at any civilian or municipal plant are militarized, the plant must appear on the Master or Service Command Responsibility List.

2. *Mission of the Auxiliary Military Police.*—*a.* The mission of a guard force of Auxiliary Military Police is—

(1) To provide internal and external protection of the plant against sabotage, espionage, and natural hazards.

(2) To serve with the Army in providing protection to the plant and its environs in emergency situations.

b. An emergency situation in which the Auxiliary Military Police may be called upon for military service may arise from flood, conflagration, or other disaster; internal disorders hazardous to property or production important to the prosecution of the war; enemy action by air raid; fifth column activity; paratroop attack or invasion; or it may arise from any other condition of circumstance involving the plant or its community making is necessary to place in operation one or more of the emergency plans of the War Department or of the service command.

c. A guard force or any member thereof, whether on or off duty, may be assigned to duty in an emergency at places other than the premises of the plant normally served, provided only that in the opinion of the plant guard officer or other representative of the Army in command such assignment will contribute to the protection of

the guard force's own plant and its environs or to the protection of its production.

3. *Persons eligible for membership in Auxiliary Military Police.—a.* The plant guard officer will determine in each case which groups of employees, in addition to the regular plant guard force, may become members of the Auxiliary Military Police. Persons such as firemen, watchmen, and women guards may be included provided they are able physically to perform the mission and duties of the Auxiliary Military Police described herein and in the agreement signed by the guards. Women guards may be armed, but in view of the congressional policy that women's auxiliary forces be limited to noncombatant duty, it is directed that in formulating plans for any emergency situation requiring the use of force against the enemy, such plans will provide for the assignment of any women members of the Auxiliary Military Police to noncombatant activities.

b. No minimum number of guards is required for the militarization of any guard force. Guard forces, no matter how small, will be militarized if the plants which they guard are so located that the guards can be organized, trained, and commanded efficiently by available Army personnel, and if, in the opinion of the plant guard officer, the results obtainable are commensurate with the effort involved.

c. Employment of an alien as a plant guard must be approved by the Secretary of War in the same manner as employment of an alien having access to work on classified or aeronautical contracts.

4. *Responsibility for military organization, training, and command of the Auxiliary Military Police.—a. The Provost Marshal General.*—The Provost Marshal General is charged with the general supervision of activities relating to the Auxiliary Military Police as a part of the internal security program. Requests for legal opinions relating to the Auxiliary Military Police will be made through military channels to the Provost Marshal General.

b. Commanding generals of service commands.

(1) The commanding generals of service commands are responsible for the military organization, training, and command of the guard forces at all plants and installations within their respective service commands except plants and installations which are under the continuing protection responsibility of the Navy, ports of embarkation, and plants and installation which in the opinion of the Provost Marshal General should be exempt from such organization.

(2) At ports of embarkation, the local commanding officer is responsible for the military organization, training, and command of the guard forces. The commanding general of the service command will be advised, if he so requests, of the number, location, equipment, and state of training of such guard forces, and he may make recommendations in connection therewith. The commanding general of the service command may inspect these guard forces at times convenient to the local commanding officer.

c. Commanding officer having jurisdiction over the guard forces. (See Par. 3, attached letter.)

(1) *Plants and installations having no local resident Commanding officer.*—The commanding general of the service command will designate an officer to be the commanding officer having jurisdiction over the guard forces of plants and installations at which there is no local resident commanding officer. This officer will be the commanding officer of the district of the service command in which the plant or installation is located, unless the commanding general of the service command directs otherwise.

(2) *Plants and installations with a local resident commanding officer.*—The commanding officer having jurisdiction over the guard forces of plants and installations (including ports of embarkation) at which there is a resident local commanding officer will be such commanding officer.

(3) In all matters pertaining to military organization, training, and command of the Auxiliary Military Police, the commanding officer having jurisdiction over the guard forces (except such officer at ports of embarkation) will report to the commanding general of the service command.

d. Plant guard officers.

(1) For each plant or group of plants at which there is no local resident commanding officer, the commanding generals of service commands will appoint or cause to be appointed a commissioned officer called the "plant guard officer" to have command (see par. 6*a* (1) of the guard force.

(2) At each plant where there is a local resident commanding officer, this officer will either serve as plant guard officer himself; appoint an officer from his command so to serve; or request the commanding general of the service command to appoint or cause to be appointed a plant guard officer.

(3) The plant guard officer is the member of the Army of the United States in command, see par. 3*c*, attached letter) of the guard force, and will report direct to the commanding officer having jurisdiction over the guard force (see *c*, above) on all matters pertaining to the military organization, training, and command of the Auxiliary Military Police. Noncommissioned officers from the Army of the United States will be assigned when available to the plant guard officers for the purpose of assisting in military drill and instruction.

e. Termination or change of continuing protection responsibility.

(1) If a plant at which the guard force has been organized as Auxiliary Military Police is removed from the Master or Service Command Responsibility List, the commanding general of the service command will determine whether such guard force will be continued as Auxiliary Military Police, and

trained and commanded as before, or whether its status as such will be terminated. In the latter event, each member in good standing of such force will be issued a Certificate of Meritorious Conduct (see par. 6*c*.).

(2) Should the responsibility for the continuing protection of any plant at which the guard force has been organized as Auxiliary Military Police be transferred from the Army to the Navy, each member in good standing of the force will be issued a Certificate of Meritorious Conduct prior to the actual assumption by the Navy of the responsibility for continuing protection.

5. *Activation of organization of Auxiliary Military Police.—a. Articles of War explained.*

(1) Guard forces which have not been organized as required (see par. 1, attached letter) will be assembled at the earliest practicable date by the plant management at the request of the plant guard officer. At this assembly the Articles of War as prescribed by Article of War 110 will be read and explained to each member of the guard force (par. 3*a*. attached letter) by the plant guard officer or in his absence or unavailability by some other competent person who is an officer of the Army or civilian officer of the Auxiliary Military Police. As certain of the Articles of War are generally inapplicable to Auxiliary Military Police, the foregoing directive will considered complied with if Articles 2, 58, 59, 61-64, 66, 68-74, 76, 81-83, 85, 88-90, 92-94, 96, 104, and 105 are read and explained. These Articles define certain offenses punishable by court martial of which persons subject to military law may be guilty.

(2) The Auxiliary Military Police, immediately after the Articles of War have been read and explained, will be impressed with the fact that the Government of the United States is directly interested in the security and protection of the plant and its production as essential to the successful prosecution of

the war. To this and the plant guard officer will issue and post a guard order reading, with appropriate variation to meet local conditions, substantially as follows:

Guard Order No.....

To the Auxiliary Military Police at.....

1. On (date) the guard forces at this plant were activated by the War Department as Auxiliary Military Police, and for military purposes will be commanded, drilled, and instructed as military units.

2. All members of the guard force are subject to the Articles of War and may be court martialed or otherwise punished for violations thereof.

3. Effective on this date....., a commissioned officer of the Army of the United States has been placed in command. Although in command at all times, this officer has not superseded the civilian guard officers and normally will exercise direct control only in matters relating to military instruction and duties as Auxiliary Military police.

4. The mission of this guard force is to provide protection for this plant. In addition to its normal functions, the force or any member thereof whether on or off duty is available for military use in any emergency, whether it be the result of flood, conflagration, or other disaster; internal disorders hazardous to the plant property or its production; or enemy action of any nature. *No conflicting interest of any kind will be permitted to interfere with the successful accomplishment of this mission.*

5. The Government of the United States regards the protection of this plant and its production as essential in the successful prosecution of the war. The Auxiliary Military Police are ordered to provide this necessary protection and to ward off danger or threat of danger of any kind and from any source. If force must be used to accomplish this result, it will be used only to the extent reasonably necessary.

6. No member of the Auxiliary Military Police may resign without the written approval of the plant guard officer. Inattention to duty, failure to attend required drill, and conduct unbecoming to the service may be cause of dismissal and the denial of a Certificate of Meritorious Conduct.

For the Commanding Officer, ...District:

.....
(Date)

.....
(Plant guard officer)

The foregoing guard order will be issued in accordance with the provisions of *c* below.

b. *Pledge and agreement.*

(1) At the time of reading the Articles of War, each member of the guard force will give the pledge of loyalty to the United States and execute the agreement, prescribed form of which is shown in the inclosure to the attached letter. A separate pledge or oath is not required. If a guard refuses to sign the agreement, he may (but need not) be temporarily retained with the understanding that he will be dismissed as soon as replaced, and in any event within a reasonable time. The signed agreement will be retained by the plant guard officer. The guard force will be considered as a civilian auxiliary to the Military Police when 75 percent of the guards at a given plant have signed the agreement (see par. 3, attached letter). A certificate of membership in the Auxiliary Military Police will be issued each member. Forms will be supplied to the commanding generals of service commands by the Provost Marshal General.

(2) Each plant guard who becomes a member of the Auxiliary Military Police continues as such until he is released from his obligations. This will take place when competent military authority has approved of his dismissal or resignation (see par. 6b)

or when he has been discharged without honor (see par. 6*c*.)

c. Auxiliary Military Police orders and regulations.

(1) Orders and regulations for the Auxiliary Military Police from the military authority will be issued in the name of the commanding officer having jurisdiction over the guard forces (see par. 4*c*.)

(2) At civilian-operated plants, such orders will be issued only after consultation with and, if possible, concurrence by the plant management.

6. *Status of Auxiliary Military Police.*—a. *Control.*

(1) The Auxiliary Military Police will continue to function as formerly, except that a member of the Army of the United States will be in command at all times, and except that they will be trained and instructed with a view to supplementing the Army in affording protection in emergency situations (see par. 2*b*.). Control, therefore, will be exercised as heretofore through the plant management except at drill and except in emergency situations. Although the plant guard officers will be in command at all times, they will not supplant the civilian guard officers, and unless expediency demands otherwise will exercise their authority through the chain of command established by the plant management.

(2) The Auxiliary Military Police are supplementing the Army of the United States in a vital task of protecting war material and war production facilities. Attempts to intimidate them or to reduce or nullify their efficiency, or interfere with the performance of their mission, may constitute a violation of Federal as well as state criminal laws. When such incidents are suspected, an inquiry will be made and a detailed report will be sent immediately through channels to the office of the Provost Marshal General as a basis for requesting an investigation or prosecution.

b. Employer-employe relationship.

(1) Basically, the militarization of plant guard forces does not change the existing systems of hiring, compensation, and dismissal; all remain primarily a matter between the guards and the plant managements. Guards in the employ of a private employer may, as heretofore, be dismissed by that employer, and those who are Civil Service employees in the employ of the War Department may be dismissed by the local commanding officer in accordance with Civil Service regulations. In neither case is a court martial necessary.

(2) A member of the Auxiliary Military Police may not be employed or dismissed and may not resign if the plant guard officer or other responsible Army representative believes that the efficiency of the plant's guard force would be impaired and declines to give his approval thereto.

c. Certificate of Meritorious Conduct.—A Certificate of Meritorious Conduct will be issued to each member of the Auxiliary Military Police whose service is terminated honorably. Forms will be supplied to the commanding generals of service commands by the Provost Marshal General. In the event of termination of service under conditions other than honorable, no such certificate will be issued. The commanding general of the service command may authorize a communication to each member of the Auxiliary Military Police whose service is terminated under conditions other than honorable, which will state only the fact of termination, the date, and that the communication is not a Certificate of Meritorious Conduct.

d. Discharge without honor.—If a member of the Auxiliary Military Police permanently quits his employment without approval of the plant guard officer or other duly authorized officer, a notice substantially as follows may be transmitted to him and a copy posted on the plant bulletin board:

Union's Exhibit No. 1

SUBJECT: Discharge without honor.

TO:

This is to notify you that you are discharged without honor as a member of the Auxiliary Military Police. A copy of this discharge and full statement of facts concerning your absence from duty without leave are being furnished the Provost Marshal General and the Selective Service System, Washington, D. C., for such further action as may be deemed appropriate.

By command of (Commanding General,

.....service command;

.....

Discharge without honor will be regarded as exceptional procedure applicable to exceptional cases when the guard in fact is no longer in the employ of the company and is not available for dismissal, suspension, or reprimand. It should be used only after careful investigation of the facts, which may include a hearing if deemed advisable.

e. Appeal from dismissal.—A member of the Auxiliary Military Police employed by a civilian employer, discharged without honor or dismissed by or at the request of the plant guard officer or other authorized War Department representative (except by court martial proceedings), may, within 30 days of such discharge or dismissal, appeal through channels to the next superior Army authority in writing to reconsider such action. Such appeal will include a brief signed statement of the reasons for regarding the action unjust. If a member of the Auxiliary Military Police is discharged without honor or dismissed for an offense constituting a violation of the Articles of War, he may ask for a trial by court martial.

f. Employee benefits.—The status of the employer in respect to the employee benefits for the guard force is not changed. For example, social security, workmen's compensation, and employer's liability provisions remain unaffected. Employers should have a clear understanding with their insurance companies concerned.

Union's Exhibit No. 1

g. Contractual relations.—It is not anticipated that the organization of plant guards as Auxiliary Military Police necessitates changes in existing contracts with the Government, but in any exceptional case where such alterations are essential to carry out the organization, arrangements to effect the necessary changes will be initiated by the plant guard officer with the least delay possible.

h. Labor relationships.

(1) If any proposed labor agreement is being considered which involves plant protection employees who are or may become members of the Auxiliary Military Police, the contracting parties will be urged to insert in such agreement a provision substantially as follows:

"It is understood that for the duration of the war this agreement is in all respects subject to the provisions of the directives of the War Department concerning military organization of the plant guard forces (letter, The Adjutant General's Office, AG 231.43 (7-2-42) MS-SPAAM-M, July 2, 1942, subject, "Military Organization of Plant Guard Forces"; and Circular No. 15, Headquarters, Army Service Forces, March 17, 1943, subject, "Auxiliary Military Police," and any amendments thereto), and that nothing contained in this agreement will be construed in any way to interfere with the organization, efficiency, training, and control by the War Department of the company guard force as an Auxiliary to the Military Police, nor to abrogate or interfere with the duties, responsibilities, and rights imposed by the War Department upon any employee in such Auxiliary Military Police."

(2) Auxiliary Military Police are permitted to bargain collectively, but no such activity will be tolerated which will interfere with their obligations as members of the Auxiliary Military Police. In view of recent decisions by the National Labor Relations Board (see In re Lord Mfg. Co. & United Rubber

Workers of America, CIO, Case No. R-4826, February 1943), the Auxiliary Military Police should be represented in collective bargaining with the management by a bargaining unit other than that composed of the production and maintenance workers, although both bargaining units may be affiliated with the same labor organization. Where the guards are not now included in the same bargaining unit, this is mandatory; where the guards are included in such unit, serious consideration will be given to effect a change to conform to the foregoing policies.

7. *Qualifications and equipment of Auxiliary Military Police.—a. Physical fitness.*—A member of the Auxiliary Military Police must be physically fit to perform his duties properly and in an efficient manner. It is sufficient if his physical fitness satisfies the plant guard officer.

b. Uniform.—Each member will be properly uniformed by the plant. A complete uniform consisting of blouse or shirt, trousers, and hat is not required although the complete uniform is preferred. The plant guard officer will determine, with due regard to all circumstances, whether his guard force is "properly uniformed."

c. Distinctive insignia.

(1) Because the mission of the Auxiliary Military Police includes service with the Army (see par. 2*b*), the laws of war require that members wear distinctive insignia or marks capable of recognition at a distance. By wearing such insignia or marks members serving with the Army will be recognized as legitimate troops and not deemed irregulars or guerillas. Accordingly, members of the Auxiliary Military Police will wear either—

(a) An arm band (brassard), white, with the words "Auxiliary Military Police" in blue, such as has been distributed to commanding generals of service commands for issuance; or

(b) A badge or patch which may be worn on the right or left sleeve, at the shoulder or cuff level, or on

the right or left breast pocket, either of a design substantially similar to the drawing attached to the letter, Office of the Provost Marshal General, SPMGS 231.4, November 28, 1942, subject, "Distinctive Insignia for Auxiliary Military Police," or of any other design, capable of recognition at a distance, bearing the words "Auxiliary Military Police," and approved by the commanding general of the service command.

Commanding generals of service commands will determine the device that will be worn by a given guard force and the manner and time of wearing it. Badges or patches must be procured by the plants adopting them, at their own expense, and may be manufactured of any noncritical material. Commanding generals of service commands may also authorize plants to procure at their own expense arm bands, similar in appearance to those already issued, of any color combination capable of recognition at a distance and manufactured of any noncritical material.

(2) Each member of the Auxiliary Military Police is authorized to wear a service stripe for each six months of service faithfully performed. Service stripes will be in accordance with Army Regulations (see par. 27*c*, AR 600-35, Nov. 10, 1941, "Personnel—Prescribed Service Uniform"; par 46*c*, AR 600-40, Aug. 28, 1941, "Personnel—Wearing of the Service Uniform"), except that they will conform in material and color to the chevrons furnished by the plant management to noncommissioned officers of the guard force.

(3) Commanding generals of service commands may authorize a guidon for an Auxiliary Military Police force which has shown itself outstanding in training, appearance, and efficiency.

d. Identification cards.—Each member of the Auxiliary Military Police must carry at all times an identification

card bearing his photograph, fingerprints, signature, and description properly authenticated by the plant guard officer. As no special form of card is required, existing cards which can be made to satisfy all of these requirements may be utilized. The description of the guard need not be in detail, and will be sufficient if it contains easily recognizable characteristics such as color of hair and eyes, height, weight, and age.

e. Arms.

(1) The Auxiliary Military Police must be armed with appropriate weapons furnished by the plant management if such arming is recommended by the plant guard officer. Any sidearm, rifle, or shotgun may be an appropriate weapon depending on the circumstances. Training in the use of firearms and providing ammunition therefor are functions of the plant management. If the plant guard officer determines that the Auxiliary Military Police are not sufficiently trained in the use of firearms or are not adequately qualified in marksmanship, he may require the plant management to give further training and when he deems it desirable may accomplish such training himself.

(2) The Auxiliary Military Police, as agents of the Federal Government, will not be subject to any state or municipal requirement which conflicts with their wartime duties. A member of the Auxiliary Military Police required to be armed in performance of his duties will not be compelled to obtain a license, permit, or bond to possess small firearms in order to comply with local statutes or ordinances. State authorities have concurred when this question has been presented. The full cooperation of state and local authorities will be obtained and local requirements met unless a satisfactory understanding is reached.

f. Deputizing.—In general, there will be no considerable additional advantage in deputizing members of the Auxi-

liary Military Police as sheriffs or marshals. However, there will be individual cases in which it will be advisable to continue the local or state official capacity. The authority of the plant guard includes power to arrest without a warrant for violation of the Sabotage Act (50, U.S.C., 101-106) or the Espionage Act (50, U. S. C., 21 and 32).

g. Training.

(1) The plant management continues to be charged with the training of its guard forces in their ordinary protective duties. In addition, the guard force must be qualified to perform its mission as set forth in paragraph 2*a*. This includes the ability to serve efficiently with the Army in any emergency situation that may arise (see par. 2*b*). To this end, the Auxiliary Military Police will be trained by or under the direction of the plant guard officer in military subjects to the extent he deems necessary. The use of experienced personnel from within the guard force for the purpose of conducting such training will be encouraged by the plant guard officer. The time to be devoted to such training will be determined by the plant guard officer. It will not exceed one hour per week or its equivalent except with the approval of the plant management.

(2) The military training will consist of such of the subjects listed in (3) and (4) below as the plant guard officer finds appropriate for each guard force, giving the consideration in each instance to the character, experience, previous training, and qualifications of the force as well as the locality and geography of the plant, its importance in the prosecution of the war, and all other pertinent considerations.

(3) Basic military subjects in which training may be given include—

(a) Military courtesy and discipline; Articles of War.

(b) Defense against air and parachute attack.
(c) Interior and special guard duty (military only).
(d) Personal encounters.
(e) Inspections.
(f) Use of weapons—hand grenades, pistol, police riot club shotgun, tommy gun (where applicable).
(g) Military police—organization, duties, powers of arrest, use of force, etc.

(4) Advanced subjects in which training may be given includes:
(a) Riot formations.
(b) Approach marches.
(c) Other applicable subjects included in military police tactical unit training.
(d) Tactical problems which may be given from time to time to determine the effectiveness of the guard force in emergency situations.

(5) Judgment, initiative, imagination, and a cooperative relationship with the plant management are essential in determining the kind and amount of training to be given. Not only will the training requirements vary in different plants, but the requirements within a given guard may vary. Guards will not be required to attend drill or instruction covering subjects in which they are already trained and qualified. Training films, film strips, and film bulletins are regarded as valuable in the military training of Auxiliary Military Police, and the plant guard officer will encourage their use. The necessary projecting equipment, in which there may be a shortage, may often be borrowed from local clubs and similar organizations. The objective of all training is to increase the efficiency of the Auxiliary Military Police, and unless this is accomplished the plant guard officer has failed in his mission.

8. *Subjection of Auxiliary Military Police to military law.—a. Court martial jurisdiction.*

(1) The commanding generals of service commands

have general court martial jurisdiction over the plant guard forces within the geographical limits of their commands. The commanding officer of any War Department owned and operated plant and the commanding officer having jurisdiction over the guard forces (see par. 4*c*) have the power to appoint special and summary courts martial, subject to the right of superior authority to appoint such courts when deemed desirable. The commanding officer having jurisdiction over the plant guard forces may also appoint summary courts martial subject to the same right of superior authority to appoint such courts; except that when the plant guard officer is the only commissioned officer present with a plant guard command, he will be the summary court martial of that command and will hear and determine cases brought before him.

(2) The plant guard officer also has the summary disciplinary authority of a company commander pursuant to Article of War 104. Attention is directed to the fact that an offender may not be summarily punished if he demands trial by court martial and also that if, after consenting to receive summary punishment, he deems his punishment too severe he may appeal to the next superior authority for review. Court martial jurisdiction exists at all times, even while the Auxiliary Military Police are off duty. However, it is inadvisable to order a court martial for offenses committed while off duty and not within the plant premises, unless the offense is directly connected with the individual's duties as a member of the Auxiliary Military Police.

(3) Pending instructions to the contrary, no court martial proceeding of any nature involving a member of the Auxiliary Military Police will be commenced without the prior approval of the War Department.

b. Discipline—The institution of a court martial proceeding will be resorted to only in cases where no other form of punishment will be effective. If the offense in-

volves a violation of a criminal statute or ordinance other than the Articles of War, the individual will be turned over to the civil law enforcement officials.

c. Confinement.—In the absence of an adequate guardhouse or place of confinement, offenders will be confined at the nearest military post having a guardhouse, or turned over to the United States marshal for custody. United States marshals usually have arrangements with the state or local civil authorities for the confinement of prisoners.

d. Punishment.—Unlike the court martial punishment of a person in military service, a court martial cannot punish a member of the Auxiliary Military Police by reduction in military grade or by forfeiture of pay and allowances. Analogous punishments might be imposed, such as reduction in grade in the guard organization or temporary suspension from duty. A fine, as distinguished from forfeiture, is regarded as an appropriate form of punishment.

e. Dealing with civil authorities.—When a member of the Auxiliary Military Police injures or kills a person while in the performance of his duties, he will be arrested and detained. If a civil police official seeks to arrest him, the plant guard officer, under the authority of the 74th Article of War, may refuse to release the individual until such release is approved by the commanding general of the service command. A member of the Auxiliary Military Police is entitled to the same protection as a sentinel under similar circumstances. If a writ of habeas corpus is issued for a member of the Auxiliary Military Police held to answer by the military, the procedure of chapter XXVII, Manual for Courts Martial 1928, should be followed.

f. Recognition of meritorious conduct.

(1) Members of the Auxiliary Military Police are eligible for the decoration "Medal of Merit" authorized by the President for award to civilians who distinguish themselves by exceptionally meritorious con-

duct or by performance of outstanding services. (See Bull. 1, WD, 1943.) All cases of members of the Auxiliary Military Police who, in the opinion of the plant guard officer, deserve consideration for this award will be referred through channels to the office of the Provost Marshal General for transmission to the Medal of Merit Board. A full statement of facts and appropriate recommendations will be included.

(2) Any case of meritorious conduct which in the opinion of the plant guard officer does not warrant recommendation for the award of the Medal of Merit, but which he deems deserving of official commendation, will be the subject of a special order of commendation issued by the commanding officer having jurisdiction over the guard force (see par. 4*c*). Such special orders will be issued promptly and with liberality, and will be given appropriate publicity, particularly among the guard force concerned. A copy of each such special order will be furnished to the employer.

g. Prior instructions rescinded.—The instructions contained in all other letters and circulars concerning the organization, training, and command of plant guard forces except the attached letter are rescinded.

(SPX 231.43 (2-27-43)SPMGS-MP-FH)

By Command of Lieutenant General SOMERVELL:

W. D. Styer,
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:
H. B. Lewis,
Brigadier General,
Adjutant General.

I Incl.

Union's Exhibit No. 1

(Cir. 15)

WAR DEPARTMENT
The Adjutant General's Office
Washington

AG 231.43 (7-2-43)MS-SPAAM-M

SUBJECT: Military Organization of Plant Guard Forces.

TO: The Commanding General,
Material Command, Army Air Forces;
The Provost Marshal General;
The Chiefs of Supply Services.

1. Guard forces at all War Department plants, posts and stations controlled or operated by the Supply Services or by the Army Air Forces, and at all plants assigned for protective survey and inspection to the Chiefs of Supply Services and to the Commanding General, Materiel Command, Army Air Forces, are to be organized, drilled and instructed as military units subject to the Articles of War. (Art. 2 (d)).

2. These guard forces will be organized as a civilian auxiliary to the Military Police in all ammunition plants and plants where the possibility of sabotage is greatest, giving first priority to those plants which are most vulnerable from the standpoint of sabotage activities. The organization of these civilian guard forces will be extended as rapidly as conditions permit to civilian plants having important government contracts. Priorities will be established in collaboration with The Provost Marshal General.

3. At the time any guard force is organized as a civilian auxiliary to the Military Police, the commanding officer having jurisdiction over the guard force will:

a. Cause of Articles of War prescribed by Article 110 thereof to be read and explained to each member of the guard force;

b. Issue orders and regulations setting forth the duties and responsibilities of the guard force;

c. Organize each guard force with a member of the Army of the United States in command and cause each force to be drilled and instructed with a view to supplementing the Army in resisting attack on war material, war premises, and war utilities which the force is assigned to guard.

d. Require each member of the guard force to give a pledge of loyalty to the United States, and to execute an agreement acknowledging that such Articles of War are understood by him and that he is subject to military law as long as he remains a member of the guard force. (A draft of a form of such agreement is attached.)

By order of the Secretary of War:

(s) J. A. Ulio,
Major General,
The Adjutant General.

1 Inclosure.
Draft of Agreement.

COPIES FURNISHED:
The Under Secretary of War;
The Commanding Generals, Army Air Forces;
Services of Supply.
The Inspector General;
The Judge Advocate General;
The Chief of Administrative Services
Staff Divisions of the Services of Supply
Divisions of the War Department
General Staff.

Inclosure to ASF Circular No. 15,
March 17, 1943.

CASE NO. VII-C-1209

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SEVENTH REGION

In the matter of—

FEDERAL MOTOR TRUCK COMPANY,

and

AMALGAMATED PLANT PROTECTION LOCAL UNION No. 114, UAW-CIO

Case No. 7-C-1209

CHARGE

Board's Exhibit No. 1-A

(Filed July 24, 1943)

Pursuant to Section 10 (*b*) of the National Labor Relations Act, the undersigned hereby charges that Federal Motor Truck Company at 5780 Federal Street, Detroit, Michigan, employing 600 workers in the manufacture of war products, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (5) of said Act, in that

On or about July 15, 1943, Amalgamated Plant Protection Local No. 114, UAW-CIO, pursuant to the Board's Decision dated June 8, 1943, and Certification of Representatives dated July 16, 1943, requested the company to negotiate a contract.

On or about July 20, 1943, the company replied by letter that it would not bargain collectively with the Union.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number, and affiliation of organization, and name and official position of the person acting for the organization.)

AMALGAMATED PLANT PROTECTION LOCAL
No. 114, UAW-CIO,
By: IRVING E. GRIFFETH, *President*,
907 Hofmann Building, Detroit—CA 5490.

Subscribed and sworn to before me this 23rd day of July, 1943 at Detroit, Michigan.

(SEAL) CHARLOTTE ANERBUETZ, *Field Examiner*,
N. L. R. B., 7th Region.

COMPLAINT

(Issued October 30, 1943)

It having been charged by Amalgamated Plant Protection Local No. 114, UAW-CIO, that Federal Motor Truck Company, a corporation, herein called respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, herein called the Act, the National Labor Relations Board, herein called the Board, by the Regional Director for the Seventh Region, as agent of the Board, designated by the National Labor Relations Board Rules and Regulations, Series 2, as amended, hereby issues its complaint and alleges the following:

1. Respondent is and at all times herein mentioned was a corporation organized and existing under the laws of

the state of Michigan, having its principal office and places of business in Detroit, Michigan, where it owns and maintains three manufacturing plants and is engaged in the general manufacture and assembly of motor trucks and truck parts.

2. In the course and conduct of its business in Detroit, Michigan, respondent causes and has at all times herein mentioned continuously caused large quantities of raw materials, fabricated and partially fabricated articles and merchandise to be purchased and transported in interstate commerce from and through states of the United States other than the state of Michigan to its place of business in Detroit, Michigan, and causes and has at all times herein mentioned continuously caused large quantities of said finished products or partly finished products to be sold by it, transported and distributed in interstate commerce from its place of business in Detroit, Michigan, into and through states of the United States other than the state of Michigan.

3. Amalgamated Plant Protection Local No. 114, UAW-CIO, herein called the union, is a labor organization within the meaning of Section 2, subsection (5) of the Act and admits to membership certain of respondent's employees.

4. The employees of respondent at its plants in Detroit, Michigan, engaged in plant protection, excluding the plant engineer, the assistant chief of plant protection and other supervisory employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (a) and 9 (b) of said Act.

5. On July 3, 1943, and at all times thereafter, a majority of the employees in the above-described unit had designated the union as their representative for collective bargaining with respondent in respect to rates of pay, wages, hours of employment and other conditions of employment, said designation having been made by said employees at an election by secret ballot conducted by the Board pursuant to the said Act and the Rules and Regulations of the Board. On July 3, 1943, the union was and at all times since has been the sole representative for

collective bargaining as aforesaid of a majority of the employees in said unit and was and has been by virtue of Section 9 (a) of said Act the exclusive representative for all employees in said unit for collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

6. On July 16, 1943, the Board pursuant to Section 9, subsection (c) of the Act certified the union as the exclusive representative of all the employees in said unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and on the same date the Board's said certification was duly served upon respondent.

7. On or about July 15, 1943, the union requested respondent to bargain collectively with it on behalf of the employees in the said unit concerning rates of pay, wages, hours of employment and other conditions of employment. On or about July 20, 1943, and at all times since respondent refused and still refuses to bargain collectively with the union on behalf of the employees in said unit.

8. By its act of refusal to bargain collectively with the union on behalf of the employees in said unit concerning rates of pay, wages, hours of employment and other conditions of employment respondent did engage in and is engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

9. By the acts hereinbefore set forth in Paragraph 7, respondent has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of rights guaranteed to them in Section 7 of the Act and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

10. The acts of respondent hereinbefore set forth in Paragraphs 7 and 8 occurring in connection with the operations of respondent's business hereinbefore set forth in Paragraphs 1 and 2, inclusive, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, have led to and tend to lead to

labor disputes burdening and obstructing commerce and the free flow of commerce.

11. The acts of respondent hereinbefore set forth constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board on the thirtieth day of October, 1943, issues its complaint against Federal Motor Truck Company, a corporation, respondent herein.

HAROLD A. CRANEFIELD,
Acting Regional Director,
National Labor Relations Board,
Seventh Region.

NOTICE OF HEARING

(Signed October 30, 1943)

PLEASE TAKE NOTICE that on the 15th day of November, 1943, at 10:00 A. M., in the Hearing Room of the National Labor Relations Board, 1332 National Bank Building, Detroit, Michigan, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof.

PLEASE TAKE NOTICE that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Acting Regional Director for the Seventh Region on this 30th day of October, 1943.

HAROLD A. CRANEFIELD,
Acting Regional Director,
(SEAL) National Labor Relations Board.

ANSWER OF FEDERAL MOTOR TRUCK COMPANY
Board's Exhibit 1-C

(Sworn to November 2, 1943)

NOW COMES Federal Motor Truck Company, a Michigan corporation, and answering the Complaint herein states:

1. Answering paragraph 1, it admits the contents thereof.

2. Answering paragraph 2, it admits the contents thereof.

3. Answering paragraph 3, it admits the contents thereof.

4. Answering paragraph 4, it denies the contents thereof for the reasons heretofore asserted by it in "In the Matter of Federal Motor Truck Company and Amalgamated Plant Protection Local Union No. 114, UAW-CIO," Case No. R-5356, National Labor Relations Board.

5. Answering paragraph 5, it denies that the unit is a proper unit, and alleges as the reasons therefor the matter contained in the preceding paragraph of this Answer.

Further answering said paragraph, the Company is without definite knowledge and therefore leaves the Board to its proofs.

6. Answering paragraph 6, it admits the contents thereof.

7. Answering paragraph 7, it admits the contents thereof.

8. Answering paragraph 8, it denies the contents thereof for the reasons set forth in paragraph 5 of this Answer.

9. Answering paragraph 9, it denies the contents thereof for the reasons set forth in paragraph 5 of this Answer.

10. Answering paragraph 10, it denies the contents thereof.

11. Answering paragraph 11, it denies the contents thereof because of the matters set forth in paragraphs 5 and 10 of this Answer.

WHEREFORE, the Company prays that the Complaint be dismissed.

FEDERAL MOTOR TRUCK COMPANY,
By T. R. LIPPARD, *President.*

BEAUMONT, SMITH & HARRIS,
Attorneys for the Company.

ALBERT E. MEDER,
Of Counsel.
11th floor Ford Building,
Detroit, Michigan.

STATE OF MICHIGAN, } ss:
COUNTY OF WAYNE }

T. R. LIPPARD, being duly sworn, deposes and says that he has read the foregoing Answer and that the same is true and that as president of Federal Motor Truck Company he is authorized to sign the same for and on behalf of the Company.

T. R. LIPPARD.

Subscribed and sworn to before me this 2nd day of November, 1943.

(SEAL) HERBERT H. PENNY, *Notary Public*, Wayne County, Michigan.

My commission expires November 18, 1944.

STIPULATION

Board's Exhibit 2

(Dated November 15, 1943)

It is hereby stipulated and agreed by and between Federal Motor Truck Company, herein referred to as the company, by its attorneys of record, and Max Rotenberg, attorney for the National Labor Relations Board, herein referred to as the Board, for the purpose of the above entitled proceeding only:

1. Federal Motor Truck Company is a Michigan corporation having its principal place of business in Detroit, Michigan. In peace time its business consisted of the manufacture of motor trucks, bodies, cabs and parts. At the present time the company is wholly engaged in the manufacture of trucks and truck parts for the United States Army. The company owns and operates three manufacturing plants, all located in Detroit, Michigan. The principal raw materials used by the company in its manufacturing business are wood, steel, lumber, tires and parts.

2. In the calendar year 1942, the company purchased raw materials from points located outside the state of Michigan valued at approximately $10,400,000.00. During the same period the company made deliveries of finished products to points outside the state of Michigan totaling approximately $25,000,000.00.

3. The company is engaged in interstate commerce within the meaning of Section 2, subsections (6) and (7) of the National Labor Relations Act.

Dated at Detroit, Michigan, this fifteenth day of November, 1943.

FEDERAL MOTOR TRUCK COMPANY,
By: BEAUMONT, SMITH & HARRIS,
Attorneys at Law,
By: ALBERT E. MEDER,
Attorney at Law.

MAX ROTENBERG, *Attorney,*
National Labor Relations Board,
Seventh Region.

INTERMEDIATE REPORT

(Dated November 23, 1943)

Mr. Max Rotenberg, for the Board.

Beaumont, Smith & Harris, by *Mr. Albert E. Meder,* of Detroit, Michigan, for the respondent.

Mr. Maurice Sugar, Mr. N. L. Smokler, and *Mr. Irving E. Griffeth,* of Detroit, Michigan, for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed on July 24, 1943, by Amalgamated Plant Protection Local No. 114, UAW-CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by its acting Regional Director for the Seventh Region (Detroit, Michigan), issued its complaint, dated October 30, 1943, against Federal Motor Truck Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of

the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance: (1) that the employees of respondent at its plants in Detroit, Michigan, engaged in plant protection, excluding the plant engineer, the assistant chief of plant protection and other supervisory employees, constitute a unit appropriate for the purposes of collective bargaining; (2) that a majority of the employees in the aforesaid appropriate unit designated the Union as their representative for the purposes of collective bargaining at an election conducted by the Board on July 3, 1943; (3) that at all times since July 3, 1943, the Union has been the exclusive representative of all employees in said appropriate unit; (4) that on July 16, 1943, the Board certified the Union as the exclusive representative of all employees in said unit for the purposes of collective bargaining; (5) that on or about July 15, 1943, the Union requested the respondent to bargain collectively; (6) that on or about July 20, 1943, and at all times since, the respondent refused and still refuses to bargain with the Union; and (7) that by such refusal, the respondent interfered with, restrained and coerced its employees in the rights guaranteed in Section 7 of the Act.

On November 4, 1943, the respondent filed an answer, denying the appropriateness of the unit and the commission of any unfair labor practices, but admitting the Board's certification of the Union, the Union's request to bargain and the respondent's refusal to bargain.

Pursuant to notice, a hearing was held on November 15, 1943, at Detroit, Michigan, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board, the respondent and the Union were represented by counsel. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the close of the whole case, counsel, both for the Board and the respondent,

moved to conform the pleadings to the proof, as to names and dates. The motions were granted without objection. Although afforded an opportunity to do so, none of the parties argued orally before the undersigned. Pursuant to permission granted at the hearing, the respondent filed a brief.

Upon the entire record in the case, the undersigned makes the following:

Findings of Fact

I. The business of the respondent

Federal Motor Truck Company is a Michigan corporation, having its principal place of business at Detroit, Michigan. Normally, it is engaged in the production of motor trucks, bodies, cabs and parts, but at present it is wholly engaged in the manufacture of trucks and truck parts for the United States Army. For these purposes it operates three plants, all of which are located in Detroit, Michigan. In the calendar year 1942, the respondent purchased raw materials from points located outside the State of Michigan valued at approximately $10,400,000. During the same period the respondent made deliveries of finished products to points outside the State of Michigan totaling approximately $25,000,000.

At the hearing the respondent stipulated that it is engaged in commerce within the meaning of the Act.

II. The organization involved

Amalgamated Plant Protection Local No. 114, UAW-CIO is a labor organization which admits to membership employees of the respondent.

III. The unfair labor practices

The refusal to bargain

1. The appropriate unit and representation by the Union of a majority therein

On June 8, 1943, the Board issued a Decision and Direc-

tion of Election (Case No. R-5356)[1] finding, among other things, that all plant protection employees of the respondent engaged at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

On July 3, 1943, an election was held pursuant to said Direction of Election. On July 16, 1943, the Board certified the Union as the representative of the employees in the unit heretofore mentioned, for the purposes of collective bargaining.

At the hearing the respondent did not question the fact that the Board had certified the Union as the representative of its employees, but contested the appropriateness of the unit and the subsequent certification of the Union by the Board.[2] By stipulation the record in Case No. R-5356 was made a part of the record in the instant proceeding; the respondent did not adduce any additional evidence on the question of the appropriateness of the unit.

The undersigned finds, in accordance with the Board's previous determination, that all plant protection employees

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[1] *Matter of Federal Motor Truck Company and Amalgamated Plant Protection Local Union No. 114, UAW-CIO.*

[2] At the hearing, counsel for the respondent made the following statement:

"The position of the Federal Motor Truck Company is, in the first place, that the Plant Protection men are a part of the supervision, part of management. Therefore, the Company should not be required under the Act to recognize the bargaining agency for them; that the men here involved are militarized Plant Protection men, and as such, in this case, are not employees within the meaning of the Act; that it would be contrary to public policy to include militarized Plant Protection men such as these men, within the Act; that it is not within the legal discretion of the Board to issue any certification under the facts of this case; that it is inconsistent with the prosecution of the war effort and the war itself to certify this Union, or any other union, as the bargaining agency of Plant Protection men.

"Without waiving any of the positions we have thus far taken, the Company takes the further position that even if these Plant Protection men are employees within the Act, the International Union, of which Local 114 is a part, is under written contract with the Company, in which contract the International agrees that it will not accept for membership, or represent, Plant Protection men.

of the respondent engaged at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act. The undersigned further finds that on and at all times after July 3, 1943, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that, pursuant to the provision of Section 9 (a) of the Act, the Union was on July 3, 1943, and at all times thereafter has been and is now the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. The refusal to bargain

Enclosed with a letter dated July 15, 1943, the Union sent the respondent a proposed contract and in the letter the Union requested the respondent to ". . . select a time and place for said contract to be negotiated." In reply

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"The Company further takes the position that it will not effectuate the policies of the Act to grant representation (or require bargaining) in this case.

"The Company further takes the position that the proposed unit here is not an appropriate unit, not an appropriate bargaining unit.

"Furthermore, the Company denies that there is a question affecting commerce involved."

The contract mentioned by the respondent's counsel in the above statement is a contract between the respondent and "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, and its Local No. 174," and contains the following clause:

> It is mutually agreed for the purpose of this agreement that the term "employee" shall not include foremen, assistant foremen, having the right to hire and fire, office timekeepers, time study men, clerical employees, plant protection employees or confidential salaried employees and that the Union will not solicit or accept the same for membership.

With respect to this contract, it is the undisputed evidence that although the contract is dated April 1, 1943, it was actually entered into at sometime after the hearing in the above mentioned representation proceeding, which was held on May 14, 1943.

The undersigned does not find any merit in the above contentions of the respondent.

to the Union's letter, the respondent sent the Union the following letter dated July 20, 1943:[3]

> Mr. Irving E. Griffeth
> Amalgamated Plant Protection
> Local No. 114, UAW-CIO
> 907 Hofmann Building
> 2539 Woodward Avenue
> Detroit, Michigan.
>
> Dear Sir:
>
> Answering yours of the 15th in which you ask that this Company negotiate a contract for its plant protection employees, please note that we do not care to so bargain until such time as a final decision is rendered on the various points which we raised at the hearing on the proposed certification.
>
> Very truly yours,
>
> FEDERAL MOTOR TRUCK COMPANY,
> (s) T. R. LIPPARD, *President.*

The undersigned finds that the respondent on July 20, 1943, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce, among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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[3] At the hearing the respondent admitted that at sometime between July 16 and July 20, 1943, it had received a copy of the Board's certification, dated July 16, 1943.

V. The remedy

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Since it has been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. Amalgamated Plant Protection Local No. 114, UAW-CIO is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All plant-protection employees of the respondent engaged at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Amalgamated Plant Protection Local No. 114, UAW-CIO was on July 3, 1943, and at all times thereafter, has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on about July 20, 1943, and at all times thereafter, to bargain collectively with the Union as above stated as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is

engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, Federal Motor Truck Company, and its officers, agents, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Plant Protection Local No. 114, UAW-CIO as the exclusive representative of all its plant protection employees engaged at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection and all supervisory employees;

(b) Engaging in any like or related act or conduct interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Amalgamated Plant Protection Local No. 114, UAW-CIO as the exclusive representative of all of its employees in the aforesaid appropriate unit;

(b) Post immediately in conspicuous places at its plants in Detroit, Michigan, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recom-

mended that it cease and desist in paragraph 1 (a) and (b) of these recommendations, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 19, 1943—any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C. an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement or exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

JOHN H. EADIE, *Trial Examiner.*

Dated: November 23, 1943.

EXCEPTIONS OF THE FEDERAL MOTOR TRUCK COMPANY TO THE EXAMINER'S INTERMEDIATE REPORT

(Signed December 6, 1943)

Now comes Federal Motor Truck and excepts to the Intermediate Report in the following respects:

1.

In finding in lines 6 through 20, on page 4, that the plant protection employees (excluding the plant manager, the assistant chief of plant protection, and all supervisory employees) constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act, all of the facts and the law being to the contrary.

2.

In finding in lines 59 and 60, on page 4, that the contentions of the Company are without merit, all of the facts and the law being to the contrary.

3.

In finding in lines 1 to 6, inclusive, on page 5, that the Company has refused to bargain with an appropriate unit and that it has thus interfered with, restrained and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, all of the facts and the law being to the contrary.

4.

In finding in lines 11 to 17, on page 5, inclusive, that the alleged activities of the Company have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, all of the facts and the law being to the contrary.

5.

In finding in lines 20 through 28, on page 5, that the respondent has engaged in unfair labor practices and that it has refused to bargain with employees in an appropriate unit, all the facts and the law being to the contrary.

6.

By his conclusions of law as stated in lines 38 through 64, on page 5, all of the facts and the law being to the contrary.

7.

By recommending that the Company cease and desist as set forth in lines 10 through 51, on page 6, all of the facts and the law being to the contrary.

8.

By failing to find that the plant protection employees are a part of supervision and management and, therefore, the Company is not required to collectively bargain with any agency on their behalf.

9.

By failing to find that the employees here involved are militarized plant protection men and as such are not employees within the meaning of the Act.

10.

By failing to find that it would be contrary to public policy to include militarized plant protection men such as these men within the benefits of the Act.

11.

By failing to find that it is not within the legal discretion of the Board to issue a certificate under the facts of this case.

12.

By failing to find that it is inconsistent with the prosecution of the war effort to certify this union or any other union as the bargaining agency for plant protection men.

13.

Without waiving any of the foregoing, by failing to find that Local 114 is a part of the International Union, and that the International Union is and has been under written contracts with the Company, in which contracts it agrees that plant protection employees shall not be included with-

in a unit and that it will not solicit or accept plant protection employees for membership.

14.

Without waiving any of the foregoing, by failing to find that because of such contract provisions, the union has estopped itself from acting as the bargaining agency for plant protection employees.

15.

Without waiving any of the foregoing, by failing to find that because of the contract provisions, neither the union nor any of its locals should be designated as a bargaining agent for the plant protection employees.

16.

By failing to find that no part of the funds appropriated by the Labor-Federal Security Appropriations Act (Act of July 12, 1943, 78th Cong., c. 221, P. No. 135, Title IV) should be used in connection with this case because of the fact that there is an agreement between management and labor which at the time of the certification herein had been in existence for three months or longer, and a portion of which agreement the Examiner recommends be set aside. Therefore this case should be dismissed.

17.

Without waiving any of the foregoing, by recommending in lines 16 through 22, on page 6, that the employer be restrained from "engaging in any like or related act or conduct," etc., the same being too broad.

18.

Without waiving any of the foregoing, by not confining the proposed cease and desist order to the employees involved in this case, rather than all the employees in the plant.

19.

By requiring in lines 32 through 39, on page 6, that the employer post in conspicuous places at its plant

rather than confining the posting to the assembly room of the employees here involved.

Respectfully submitted,

FEDERAL MOTOR TRUCK COMPANY,
By ALBERT E. MEDER,
Its Attorney.

BEAUMONT, SMITH & HARRIS,
Of Counsel.
11th Floor Ford Building,
Detroit, Michigan.
December 6, 1943.

DECISION AND ORDER

(Signed January 29, 1944)

In the matter of FEDERAL MOTOR TRUCK COMPANY and AMALGAMATED PLANT PROTECTION LOCAL UNION No. 114, UAW-CIO[1]	Case No. 7-C-1209

On November 23, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting

[1] The Union's name in the representation case was "Amalgamated Plant Protection Local Union No. 114," but it is clear that the same organization is meant.

brief. No request for oral argument before the Board at Washington, D. C., was made by any of the parties. The Board has considered the rulings of the Trial Examiner made at the hearing, and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the additions noted below:

1. The respondent concedes that the contentions, which it now urges as a defense to its refusal to bargain with the Union, are the same which it urged as a bar to an election in the representation case. The Trial Examiner rejected the contentions, in accordance with our determination in the representation case. We affirm the Trial Examiner's findings.

2. The respondent contends, in addition, that the Board is precluded from proceeding in this case because of the limitations imposed upon the Board by the National Labor Relations Board Appropriations Act, 1944.[2] In support of its position, the respondent contends that the charge in this case was filed more than three months after its execution of an agreement with the International Union, which was dated April 1, 1942, and provided, among other things, that plant-protection employees would not be accepted as members. However, the record shows that, at sometime during the period between May 14, 1943, and November 15, 1943, the respondent and the International signed a superseding agreement, which reenacted the aforementioned membership exclusion clause and made

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[2] Title IV, Act of July 12, 1943, P.L. 135, 78 Cong., 1st Sess. The Appropriations Act contains the following provisions:

> No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement between management and labor which has been in existence for three months or longer without complaint being filed. *Provided*, That, hereafter, notice of such agreement shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested persons.

material changes in other provisions of the preceding agreement. On the basis of the entire record we find that the 1943 agreement was intended by both contracting parties to be, and in fact was, a new agreement. Since charges were filed by the Union on July 24, 1943, the 1943 agreement was not in existence for 3 months or longer without complaint being filed, within the meaning of the 1944 Appropriations Act.[3]

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Federal Motor Truck Company, Detroit, Michigan, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Amalgamated Plant Protection Local No. 114, U.A.W. -C.I.O., as the exclusive representative of all its plant protection employees at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Amalgamated Plant Protection Local No. 114, U.A.W. - C.I.O., as

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[3] *Matter of The Cleveland Pneumatic Tool Company*, 53 N.L.R.B., No. 262.

the exclusive representative of all its plant protection employees at its three Detroit plants, excluding the plant engineer, the assistant chief of plant protection, and all supervisory employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places at its plants in Detroit, Michigan, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 29th day of January, 1944.

HARRY A. MILLIS, *Chairman,*
JOHN M. HOUSTON, *Member,*
(SEAL) National Labor Relations Board.

MR. GERARD D. REILLY, dissenting:

The real question presented here arises out of the provision in the collective contract between the Union and the Company covering production and maintenance workers, in which the Union agreed that it would not solicit or accept for membership plant protection employees, *inter alia.*

In the *Packard* case[4] there was a similar provision in the contract, although the phraseology of the agreement was somewhat different. In that case a majority of the Board held that a union which had made such an undertaking was, nevertheless, entitled to an election in which it sought to act as the collective representative of one of the categories it had agreed not to organize. Since I dis-

[4] *Matter of Packard Motor Car Company,* 47 N.L.R.B., 932.

sented in that case, I feel constrained to disagree with the holding in the instant case. The opinion of the majority in the *Packard* case was that such a provision in a collective agreement was invalid, the theory being that it contravened those provisions of the Act giving employees freedom of choice in their selection of a bargaining representative.

To my mind, however, there is a real difference between an agreement under which employees give up rights guaranteed to them by the Act or by the Constitution, and an agreement pursuant to which a labor organization simply declines to act as a representative for particular groups. There is no doctrine that a labor organization, in order to be certified as a representative under this Act, has to be willing to represent every occupational category. On the contrary, we know and have recognized the practice among craft unions of restricting membership only to certain classes of employees. In elections for public office, voters are free to select anyone of their choice, but it has never been suggested that the famous pledge of General Sherman's, "If nominated I shall not accept; if elected I shall not serve," was contrary to public policy.

Since the proceedings in the representation case which gave rise to the instant proceeding make it clear that the Union was the moving party, the principle of estoppel is applicable here.

Signed at Washington, D. C., this 29th day of January, 1944.

GERARD D. REILLY,
National Labor Relations Board.

TRANSCRIPT OF TESTIMONY

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

SEVENTH REGION

1*

In the matter of

FEDERAL MOTOR TRUCK COMPANY
and
AMALGAMATED PLANT PROTECTION LOCAL No. 114, UAW-CIO

Case No. VII-C-1209

1332 National Bank Building
Detroit, Michigan
Monday, November 15, 1943.

Pursuant to Notice, the above-entitled matter came on for hearing at 10:00 A. M.

Before: JOHN H. EADIE, Trial Examiner.

APPEARANCES:

Max Rotenberg, Esq., 1332 National Bank Building, Detroit, Appearing for the National Labor Relations Board.

Beaumont, Smith and Harris, by *Albert E. Meder, Esq.*, 11th Floor Ford Building, Detroit, Michigan, Appearing for the Company.

Irving E. Griffeth, Esq., 907 Hofmann Building, Detroit, and *Maurice Sugar & N. L. Smokler*, by *N. L. Smokler, Esq.*, 3220 Barlum Tower, Detroit, Michigan, Appearing for the Petitioner.

2 (Original Index)

* Inset numbers appearing at outer edge of text indicate page numbers of original stenographic transcript of testimony.

PROCEEDINGS

3 Trial Examiner Eadie: The hearing will come to order.

This is a formal hearing before the National Labor Relations Board In the Matter of Federal Motor Truck Company, and Amalgamated Plant Protection Local No. 114, UAW-CIO, Case No. VII-C-1209.

The Trial Examiner appearing for the National Labor Relations Board is John H. Eadie.

Counsel will please state all appearances for the record.

Mr. Rotenberg: Max Rotenberg, 1332 National Bank Building, appearing for the National Labor Relations Board.

Mr. Smokler: Maurice Sugar and N. L. Smokler, appearing for Local 114, UAW-CIO.

Trial Examiner Eadie: And who else?

Mr. Griffeth: Irving Griffeth, appearing for Amalmated Plant Protection Local No. 114.

Mr. Meder: Beaumont, Smith, and Harris, by Albert E. Meder, for the Company.

Trial Examiner Eadie: The official reporter makes the only official transcript of these proceedings.

Citations in briefs or arguments based upon the record directed to the Trial Examiner or to the Board must cite the official transcript in all references to the record. The Board will not certify any transcript other than the official transcript for use in any court litigation.

It may become necessary to make corrections in the record during the hearing. If so, the party desiring
4 the corrections will submit the suggested corrections to the other party or parties in writing. When this has received their written approval it will be submitted to the Trial Examiner. In the event the parties are unable to agree upon proposed corrections, the Trial Examiner will then consider motions to correct the record, or may, upon his own motion, order certain corrections made. If the parties have been unable to agree upon such corrections before the close of the hearing, but have entered into a stipulation concerning such matters after the close of the hearing, but before the transfer of the case to the

Board, such stipulations or motions should be addressed to the Trial Examiner in care of the Chief Trial Examiner in Washington. After the transfer of the case to the Board, all such communications should be directed to the Board itself, inasmuch as by such transfer to the Board, the Trial Examiner's connection with the case ceases.

Since this is a formal hearing, we shall maintain the dignity and decorum which usually accompanies judicial proceedings.

Concise statements of reasons for motions or objections will be permitted, but the Trial Examiner may go off the record for the purpose of hearing extended argument. Off-the-record discussion or argument will not be included in the official transcript unless an order to that effect be made by the Trial Examiner either upon the request of any of the parties or upon his own motion. All requests to go off the record are to be directed to the Trial Examiner, and not to the official reporter.

The Trial Examiner will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hearing are to be filed with the Trial Examiner.

All exhibits offered in evidence shall be in duplicate.

At the close of the hearing, the Trial Examiner will request oral argument from the parties, and will feel free to discuss with and ask questions of the counsel or representatives of the parties with respect to their contentions as to the issues of fact and the legal principles involved. Oral argument at the close of the hearing will be included in the stenographic report.

Any party shall be entitled upon request made before the close of the hearing to file a brief with the Trial Examiner. Such briefs must be filed within five days from the close of the hearing.

Five copies of such briefs shall be directed to the Trial Examiner, in care of the Chief Trial Examiner in Washington.

Mr. Rotenberg, are you ready to proceed?

Mr. Rotenberg: Yes.

6 (Documents were marked for identification Board's Exhibits Nos. 1-A, 1-B, 1-C, No. 2, No. 3-A, and No. 3-B.)

Mr. Rotenberg: I now offer in evidence several documents marked for identification as follows:

Board's Exhibit 1-A, the original Complaint and the Charge filed by Amalgamated Plant Protection Local No. 114, UAW-CIO, and the Notice of Hearing issued in this matter and served upon all parties;

Board's Exhibit 1-B, Affidavit as to Service of the Complaint and Notice of Hearing upon the parties, the affidavit being signed by Sylvia Shotzen, an employee of the National Labor Relations Board;

Board's Exhibit 1-C is the original Answer of the Federal Motor Truck Company, the Respondent herein;

Board's Exhibit 2, a written stipulation entered into by and between the Federal Motor Truck Company by its Attorneys of record, and Max Rotenberg, attorney for the National Labor Relations Board, concerning the business operations of the Company;

Board's Exhibit 3-A, a copy of the Board's Decision and Direction of Election in the Representation proceeding, involving the Respondent herein and the charging union herein, known on the Board's records as Case No. R-5356;

Board's Exhibit 3-B, a copy of the Board's certification of representatives in the case I just referred to,

7 namely, Case No. R-5356.

Let the record show I am now handing the aforementioned documents to counsel for their inspection.

Mr. Meder: No objection on the part of the Company.

Mr. Smokler: No objection on the part of the CIO.

Trial Examiner Eadie: You are offering them in evidence?

Mr. Rotenberg: Yes.

Mr. Meder: It is your understanding that the entire file, including the transcript of the testimony in the Repre-

sentation case, under the Board's rules becomes a part of this case?

Trial Examiner Eadie: That is not my understanding.

Mr. Meder: That is not?

Mr. Rotenberg: We will take the matter up about the stipulation.

Trial Examiner Eadie: Do you want this off the record? Off the record.

(Discussion off the record.)

Trial Examiner Eadie: On the record.

You have an offer that has not been ruled upon. Is there any objection to Board's Exhibit No. 1 for identification?

Mr. Rotenberg: One through 3-B, inclusive, have been offered.

Trial Examiner Eadie: 1 through 3-B. Is there any objection to these exhibits?

8 Mr. Smokler: No objection on the part of the CIO.

Mr. Meder: None on the part of the Company.

Trial Examiner Eadie: They will be received.

(The documents heretofore marked for identification, Board's Exhibits 1-A, 1-B, 1-C, No. 2, 3-A, and 3-B, were received in evidence.)

Mr. Rotenberg: Will you mark this, please?

(The document referred to was marked for identification Board's Exhibit 4-A.)

Mr. Rotenberg: I now offer in evidence Board's Exhibit 4-A, a copy of a letter addressed to Federal Motor Truck Company, Detroit, Michigan, Attention: J. D. Porter, dated July 15, 1943, signed by Irving E. Griffeth, President Amalgamated Plant Protection Local 114, UAW-CIO.

Trial Examiner Eadie: Is there any objection?

Mr. Meder: No objection on the part of the Company.

Mr. Smokler: No objection.

Trial Examiner Eadie: It will be received.

(The document heretofore marked for identification Board's Exhibit 4-A was received in evidence.)

Mr. Rotenberg: Will you mark this, please?

(The document referred to was marked for identification Board's Exhibit 4-B.)

Mr. Rotenberg: I offer in evidence Board's Exhibit 4-B, a copy of the letter addressed to Mr. Irving E.
9 Griffeth, Amalgamated Plant Protection, Local No. 114, UAW-CIO, Detroit, Michigan, dated July 20, 1943, signed by Federal Motor Truck Company, by T. R. Lippard, President.

Mr. Meder: No objection on the part of the Company.

Mr. Smokler: No objection.

Trial Examiner Eadie: It will be received.

(The document heretofore marked for identification Board's Exhibit 4-B, was received in evidence.)

Mr. Rotenberg: Counsel, I will ask you, is it stipulated by and between the Company and counsel for the Board that Amalgamated Plant Protection, Local No. 114, UAW-CIO, is a labor organization within the meaning of the Act?

Mr. Meder: Yes.

Trial Examiner Eadie: Off the record.

(Discussion off the record.)

Trial Examiner Eadie: On the record.

Mr. Rotenberg: Is it further stipulated that the Respondent Company in the instant proceeding is the same company that was involved in the Representation proceeding, identified on the Board's records as R-5356?

Mr. Meder: Yes.

Mr. Rotenberg: And that the charging union in the instant proceeding is the same union that was involved in the Representation proceeding, I just referred to?

Mr. Meder: Yes.

10 Mr. Rotenberg: And is it further stipulated that the pleading and the record, including the transcript of the testimony and proceedings had in the Representation case involving this Respondent and this charging Union, identified on the Board's record as Case R-5356, be made a part of the record and proceedings herein?

Mr. Meder: May we go off the record?

Trial Examiner Eadie: Off the record.

(Discussion off the record.)

Trial Examiner Eadie: On the record.

Mr. Meder: Yes, I so stipulate.

Mr. Rotenberg: The transcript of the testimony I just referred to is identified at the Regional Director's office as VII-R-1409. Does the charging union join in this stipulation?

Mr. Smokler: Yes.

Trial Examiner Eadie: Just a moment. Will you read that stipulation, please?

(Last stipulation read.)

Trial Examiner Eadie: What is the purpose of that stipulation?

Mr. Rotenberg: It was my understanding that the record and the proceedings in the "R" case, in the event of a petition for enforcement, would be made a part of the entire record by reason of the provisions of the
11 Act, and in order to avoid any misunderstanding, we proposed to make that offer so that all parties would so understand.

Trial Examiner Eadie: Now, as I understand it, there was a request by the Union to the Company, and the Company, or the Respondent, refused that request as shown by the two letters that you have offered in evidence, is that right?

Mr. Rotenberg: That is correct.

Trial Examiner Eadie: Now, what are the contentions of the Respondent?

Mr. Meder: The contentions of the Respondent here are the same as the contentions of the Respondent in the Representation case. Do you care to have them repeated?

Trial Examiner Eadie: Yes, if you do not mind.

Mr. Meder: I am now reading from the record in the Representation case:—

Trial Examiner Eadie Interposing): Now, as I understand it, you are going to set forth the contentions of the Respondent; there is a refusal to bargain so far in this record.

Mr. Meder: That is right.

Trial Examiner Eadie: And, as a defense, you are going to set forth your contentions now on the record?

Mr. Meder: That is correct, sir.

"The position of the Federal Motor Truck Company is, in the first place, that the Plant Protection men are
12 a part of the supervision, part of management. Therefore, the Company should not be required under the Act to recognize the bargaining agency for them; that the men here involved are militarized Plant Protection men, and as such, in this case, are not employees within the meaning of the Act; that it would be contrary to public policy to include militarized Plant Protection men such as these men, within the Act; that it is not within the legal discretion of the Board to issue any certification under the facts of this case; that it is inconsistent with the prosecution of the war effort and the war itself to certify this Union, or any other union, as the bargaining agency of Plant Protection men.

"Without waiving any of the positions we have thus far taken, the Company takes the further position that even if these Plant Protection men are employees within the Act, the International Union, of which Local 114 is a part, is under written contract with the Company, in which contract the International agrees that it will not accept for membership, or represent, Plant Protection men.

"The Company further takes the position that it will not effectuate the policies of the Act to grant representation (or require bargaining) in this case.

"The Company further takes the position that the proposed unit here is not an appropriate unit, not an
13 appropriate bargaining unit.

"Furthermore, the Company denies that there is a question affecting commerce involved."

Trial Examiner Eadie: Now, Mr. Rotenberg, as I understand it, that stipulation covered merely the transcript of the record in the "R" proceeding, is that not right?

Mr. Rotenberg: It covers the pleading and the record and the proceedings in the "R" case.

Trial Examiner Eadie: I think it would be better, instead of doing that by stipulation, to make that an exhibit.

Mr. Rotenberg: We can do that.

Mr. Meder: Off the record?

Trial Examiner Eadie: Off the record.

(Discussion off the record.)

Trial Examiner Eadie: On the record.

Now, then, as I understand it, it has been stipulated that the record in the "R" case is a part of this particular "C" case.

Mr. Meder: That is right.

Mr. Rotenberg: That is true. I now wish to state on the record that the Board in the instant proceeding is relying on the record in Case No. R-5356 for its position that the employees of this Respondent, referred to in Paragraph 4 of the Complaint in the instant proceeding, constitute an appropriate unit for collective bargaining.

14 Mr. Meder: That is correct, as far as the Company is concerned; the Company is relying on the transcript in that case, and such testimony as we will offer here today, or stipulations, for its defense.

Trial Examiner Eadie: Of course, the Board is also relying on the Board's certification in the "R" case?

Mr. Rotenberg: That is true.

Mr. Meder, does the Respondent admit that sometime between July 16, 1943, the date of the Board's certification in Case No. R-5356, and July 20, 1943, the date when the Company refused to bargain with the Union, that Respondent had received a copy of the Board's certification in Case No. R-5356?

Mr. Meder: Yes.

Trial Examiner Eadie: Off the record.

(Discussion off the record.)

Trial Examiner Eadie: On the record.

Mr. Rotenberg: The Board rests.

Mr. Meder: May we go off the record?

Trial Examiner Eadie: Off the record.

(Discussion off the record.)

Trial Examiner Eadie: On the record.

FORBES W. LUTTON,

a witness called by and on behalf of the Company, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

15 Q. (By Mr. Meder): Your name is Forbes W. Lutton?

A. Yes, sir.

Q. You are plant engineer at the Federal Motor Truck Company, Detroit, and as such, you are in charge of the watchmen, is that right?

A. That's right.

Q. You are the same witness who testified in this matter in May, 1943, in the Representation case?

A. Yes, sir.

Mr. Meder: Will you mark this, please?

(The document referred to was marked for identification Company's Exhibit 1.)

Q. (By Mr. Meder): I show you a document which, for the purpose of this case, has been marked as Company's Exhibit 1, and ask you if you know what it is?

A. Yes, sir.

Q. What is it?

A. It is an agreement between the Company and the CIO.

Q. Was that an agreement that was signed subsequent to the last hearing in this case?

A. That's right.

Mr. Meder: The Company offers in evidence Company's Exhibit 1—a paper marked for identification as Company's Exhibit 1, dated April 1, 1943, an Agreement between the Company and the International Union,
16 United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the CIO, and its Local No. 174, and more especially offers it because of Section 2 of Article I, which reads:

"It is mutually agreed for the purpose of this agreement that the term "employee" shall not in-

clude foremen, assistant foremen, having the right to hire and fire, office timekeepers, time study men, clerical employees, plant protection employees or confidential salaried employees and that the Union will not solicit or accept the same for membership."

In the Representation case, there was introduced in evidence—

Trial Examiner Eadie (Interposing): Off the record a second.

(Discussion off the record.)

Trial Examiner Eadie: On the record.

Mr. Meder: What was my last statement there?

(Record read as follows:

"In the Representation case, there was introduced in evidence—")

Mr. Meder (Continuing): —as Company's Exhibit 3, and admitted in evidence, the contract which was then in force between the International Union, and Local No. 174.

Q. (By Mr. Meder): Now, Witness—

Trial Examiner Eadie (Interposing): Just a moment. You offered this in evidence?

17 Mr. Meder: Well, I am going back and ask him a few questions first.

Trial Examiner Eadie: All right.

Mr. Meder: I will withdraw the offer.

Q. (By Mr. Meder): At the last hearing, you identified the contract which was then in force, did you not?

A. Yes, sir.

Q. Now, has that contract expired and is this new contract in effect?

A. That's right.

Trial Examiner Eadie: Referring to the new contract—

Q. (By Mr. Meder): When I refer to the new contract, I am talking about Company's Exhibit 1, which you have just identified in this case, is that correct?

A. That is correct.

Q. The paper marked, for identification, Company's Exhibit 1, was it or was it not executed after you testified in the last case?

A. It was executed after I testified.

Q. After you testified; even though it is dated back to April 1, 1943?

A. Dated back to April 1.

Mr. Meder: The Company now offers in evidence the paper which has been marked Company's Exhibit 1.

Trial Examiner Eadie: In what way is it ma-
18 terial to the issue in this case?

Mr. Meder: It is material to the issue, particularly the language of Section 2, in which the International Union, of which the local involved in this particular case is a part, agrees that it will not solicit or accept for membership the plant protection employees. It comes under Mr. Riley's dissenting opinion in a number of these cases. In other words, our position is that the International Union has estopped itself from accepting these people into membership and from representing them for the purpose of collective bargaining.

Mr. Rotenberg: The Board objects to the introduction of Company's Exhibit 1 in evidence, for the reason that it is immaterial. The Board has, in numerous cases, rejected the contention now made by the Company.

Mr. Meder: It was admitted in evidence, Mr. Examiner, in the last proceedings by the chief attorney for the Regional Board here.

Trial Examiner Eadie: I am inclined to agree with counsel for the Board. However, I will overrule the objection and it will be received in evidence as Respondent's Exhibit No. 1.

(The document heretofore marked for identification Company's Exhibit No. 1 was received in evidence.)

Q. (By Mr. Meder): Witness, you testified, did you not, at the last hearing that all but one of your
19 plant protection force had been sworn in by the Army, and that one had not been sworn in because he was a new employee. Do you remember that?

A. Yes, sir.

Q. Has that individual been sworn in since then?

A. Yes, sir.

Q. Tell us whether or not all your auxiliary military police, or, rather, whether or not all your plant protection men have been sworn in and are auxiliary military police.

A. They all are.

Q. Now, aside from that fact, has there been any change in the conditions to which you testified in the May hearing?

A. No.

Q. You still have the three plants?

A. That's right.

Q. You have the same number of plant protection men in each of the three plants?

A. Yes.

Q. And you are still operating in the same way, is that correct?

A. That is correct.

Mr. Meder: That is all, Witness.

CROSS EXAMINATION

Q. (By Mr. Rotenberg): There has been no change in the conditions and the duties of employment of the plant protection employees of the Company since the time of the Board's certification in this matter, has there?

A. No.

Mr. Rotenberg: That is all.

Trial Examiner Eadie: Any further questions?

Mr. Smokler: No further questions on the part of the CIO.

Trial Examiner Eadie: You are excused.

(Witness excused.)

Mr. Meder: The company rests.

Mr. Rotenberg: I now move the Trial Examiner that the Board's pleading conform to the proof herein, in the event there are any discrepancies in names or dates.

Mr. Meder: No objection on the part of the Company, and the same motion on the part of the Company is made as to its Answer.

Trial Examiner Eadie: Both motions will be granted.

Do any of the parties wish to present oral argument?

Mr. Meder: No. The Company would like to file a written brief.

Mr. Rotenberg: The Board does not desire to submit any oral argument.

Trial Examiner Eadie: Does the Board wish to file a brief?

Mr. Rotenberg: No. I might say this, though, that in the event the brief of Respondent reveals any mat-
21 ter which might occasion an answer on our part, we would like to reserve that right.

Trial Examiner Eadie: Well, I will say this, that all briefs must be filed within five days from today. If you wish to file a brief, I will grant permission for you to file one. You must have it in in five days. That goes for the Respondent, also.

Mr. Meder: Off the record?

Trial Examiner Eadie: Off the record.

(Discussion off the record.)

Trial Examiner Eadie: On the record.

Does the Union wish to file a brief?

Mr. Smokler: Not at this point.

Trial Examiner Eadie: Is there anything further?

Mr. Rotenberg: Nothing further on the part of the Board.

Trial Examiner Eadie: All right. The hearing is closed.

(At 11:00 o'clock a. m, Monday, November 15, 1943, the hearing in the above-entitled matter was closed.)

BOARD'S EXHIBITS Nos. 3-A and 3-B CONTAINED IN THE PLEADINGS

BOARD'S EXHIBIT No. 4-A

COPY

July 15, 1943

Federal Motor Truck Company,
5780 Federal Avenue,
Detroit, Michigan.

Attention: J. D. Porter

Dear Sir:

Enclosed please find Local No. 114's contract proposals for your Plant Protection men.

Kindly select a time and place for said contract to be negotiated.

Thanking you, and hoping to receive an early reply, I remain

Very truly yours,

IRVING E. GRIFFETH, *President*
Amalgamated Plant Protection
Local No. 114, UAW-CIO.

BOARD'S EXHIBIT No. 4-B

COPY

July 20, 1943

Mr. Irving E. Griffeth
Amalgamated Plant Protection
Local No. 114, UAW-CIO
907 Hofmann Building
2539 Woodward Avenue
Detroit, Michigan.

Dear Sir:

Answering yours of the 15th in which you ask that this Company negotiate a contract for its plant protection employees, please note that we do not care to so bargain until such time as a final decision is rendered on the various points which we raised at the hearing on the proposed certification.

Very truly yours,

FEDERAL MOTOR TRUCK COMPANY

(s) T. R. LIPPARD, *President.*

RESPONDENT'S EXHIBIT No. 1

AGREEMENT

THIS AGREEMENT, entered into this 1st day of April, 1943, between FEDERAL MOTOR TRUCK COMPANY, of Detroit, Michigan (hereinafter referred to as the "COMPANY"), and the INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, Affiliated with the Congress of Industrial Organizations, and its LOCAL 174 (hereinafter referred to as the "UNION").

WITNESSETH, the parties hereto mutually agree as follows:

ARTICLE I.

RECOGNITION

SECTION 1. The Company recognizes International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 174, affiliated with the C. I. O., as the exclusive bargaining agency for all the factory employees of the Company excepting those included within the classes mentioned in the following Section of this Article, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment or other conditions of employment, provided that any individual employee shall have the right at any time to present grievance to the Management.

SECTION 2. It is mutually agreed for the purpose of this Agreement that the term "employee" shall not include foremen, assistant foremen having the right to hire and fire, office timekeepers, time study men, clerical employees, plant protection employees or confidential salaried employees, and that the Union will not solicit or accept the same for membership.

* * * * * * * * *

ARTICLE VIII

DURATION

This Agreement shall become effective on the day and year first above written, and shall continue in full force and effect for a period of one (1) year, and shall continue thereafter in full force and effect from year to year un-

less notice of termination shall be given by either party thirty (30) days before the end of the year, or on any anniversary of that date. However, either party may give a thirty (30) day notice in writing of a desire to amend or modify any of the terms of the Agreement and a meeting to consider such proposal shall be had within ten (10) days. If an Agreement can be reached on such proposal, the contract will be so amended or modified.

FEDERAL MOTOR TRUCK COMPANY

By (Signed) T. R. LIPPARD
By (Signed) F. L. RUDDON
By (Signed) J. D. PORTER

INTERNATIONAL UNION, UNITED AUTOMOBILE AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O.

By (Signed) EDWARD J. COTE, *President*, West Side Local No. 174 UAW-CIO.

By (Signed) WILLIAM STEVENSON, *Director*, Region 1A, UAW-CIO.

SHOP COMMITTEE

FEDERAL MOTOR TRUCK DIVISION
WEST SIDE LOCAL 174, UAW-CIO

(Signed) EDWARD FALLIS
(Signed) JOSEPH W. BONNO
(Signed) J. E. POLLOCK
(Signed) HAROLD JOHNSON
(Signed) JAMES M. POYNTER
(Signed) WESTON WARREN
(Signed) GEORGE DEADMAN
(Signed) MORRIS B. HAYES
(Signed) WALTER H. JERRELL.

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PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD

v.

FEDERAL MOTOR TRUCK COMPANY

Cause argued and submitted

(October 16, 1944)

Before: HICKS, SIMONS, and ALLEN, Circuit Judges

This cause is argued by F. J. Donner for Petitioner, by Hal H. Smith for Respondent and by T. R. Iserman for Chrysler Corporation as amicus curiae, and is submitted to the court.

Judgment

(Entered December 8, 1944)

On petition for enforcement of an order of the National Labor Relations Board.

This cause came on to be heard on the transcript of record from the National Labor Relations Board, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this court that the petition for enforcement of the order of the said Board be and the same is hereby denied.

Opinion

(Filed December 8, 1944)

For copy of Opinion, see case No. 9730, NLRB v. Jones & Laughlin Steel Corp.

Petition for rehearing

(Filed January 8, 1945)

For copy of Petition for Rehearing, see case No. 9730, NLRB v. Jones & Laughlin Steel Corp.

Order denying petition for rehearing

(Entered February 6, 1945)

The Motion of United Steelworkers of America filed January 8, 1945, for leave to intervene and file a brief is granted; the brief of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) filed January 8, 1945, as amicus curiae, is allowed; and the petition to rehear filed by National Labor Relations Board January 8, 1945, is denied.

Order amending opinion

(Entered February 10, 1945)

It is ordered by the court that its opinion, filed in these causes on December 8, 1944, be and is hereby amended as follows: (1) by striking from the second sentence of the fourth full paragraph appearing on page 2 thereof the subsection designation "a" and by substituting therefor the numeral "2" so that the sentence as amended now reads, "Here the Board must give consideration to Sec. 2 (2) and (3)"; and (2) by striking from the first sentence of the third full paragraph on page 7 thereof, the section designation "2" and substituting therefor the numeral "9," so that the sentence as amended now reads, "The Board, under Sec. 9 (b) had a positive duty to perform in the interest of the public."

United States Circuit Court of Appeals for the Sixth Circuit

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of National Labor Relations Board v. Federal Motor Truck Company, No. 9769, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 10th day of April, A. D. 1945.

[SEAL]

J. W. MENZIES,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1945